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TRANSCRIPT OF RECORD

IN THE UNITED STATES

COURT OF APPEALS

FIFTH CIRCUIT

No. 16,922

R. A. PEACOCK, M. L. COFFER,
and H. J. WILSON,
Appellants,

versus

LUBBOCK COMPRESS COMPANY,
Appellee.

Appeal from the United States District Court
for the Northern District of Texas

(ORIGINAL RECORD RECEIVED SEPTEMBER 23, 1957)
FILED

INDEX

	Page
Caption	1
Plaintiffs' Original Complaint	1
Answer of Defendant	6
First Amended Answer of Defendant	9
Plaintiffs' Request for Admissions of Fact	17
Answer of Defendant to Plaintiffs' Request for Admissions of Fact	20
Oral Deposition of Clay Youngkin	26
Judgment, entered 7 15 57	36
Plaintiffs' Motion for New Trial	38
Plaintiffs' Motion for Findings of Fact and Conclusions of Law	40
Order Denying Plaintiffs' Motions for New Trial and for Findings of Fact and Conclusions of Law	43
TRANSCRIPT OF PROCEEDINGS	44
Evidence for the plaintiffs:	
Testimony of H. J. Wilson	47
Testimony of Clay Youngkin	56
Testimony of R. A. Peacock	66
Testimony of M. L. Coffer	71
Testimony of Hugh Harold	76
Evidence for the defendant:	
Testimony of Clay Youngkin (Recalled)	79

INDEX — *Continued*

Page

Coloquy between Court and Counsel 81

Testimony of Clay Youngkin (Recalled by the Court) 83

Testimony of Clay Youngkin (Recalled by the Plaintiffs) 84

Coloquy between Court and Counsel 86

EXHIBITS:

Plaintiffs' Exhibit 1 —
Copy of pay check for R. A. Peacock dated 12/30/55 94

Plaintiffs' Exhibit 2 —
Copy of pay check for R. A. Peacock dated 3/4/55 95

Defendant's Exhibit 1 —
Letter from F. Granville Grimes, Jr. to John H. Todd, dated 3/31/52 96

Findings of Fact and Conclusions of Law 97

Cost Bond 99

Notice of Appeal, filed 8/15/57 101

Letter-Designation of Portions of the Record on Appeal 102

Clerk's Certificate 105

CAPTION

BE IT REMEMBERED, that at a regular term of the United States District Court in and for the Northern District of Texas, begun and holden at Lubbock, Texas, on the 22nd day of April, A. D., 1957, the Honorable JOS. B. DOOLEY, United States District Judge for the Northern District of Texas, Presiding, at Lubbock, Texas, the following proceedings were had and the following cause came on for trial, to-wit:

No. 2121 — Civil

R. A. PEACOCK, M. L. COFFER, and
H. J. WILSON

versus

LUBBOCK COMPRESS COMPANY.

PLAINTIFFS ORIGINAL COMPLAINT

(Number and Title Omitted)

Filed: July 21, 1956

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES R. A. Peacock, M. L. Coffer and H. J. Wilson, plaintiffs, complaining of Lubbock Compress Com-

pany, and for cause of action would show the Court the following:

I.

The plaintiffs, R. A. Peacock, M. L. Coffer and H. J. Wilson are residents of Lubbock, Lubbock, County, Texas, and the defendant Lubbock Compress Company is a corporation duly incorporated under the laws of the State of Texas, with its principal place of business at Fort Worth, Texas, where service of process may be had upon it by serving its President, B. L. Anderson, of Fort Worth 1, Texas.

II.

Plaintiffs would show that they are employed by the Lubbock Compress Company as nightwatchmen, and that said Lubbock Compress Company is engaged exclusively in the compressing of cotton. That they are engaged in work which is in the flow of interstate commerce. Plaintiffs would further show that at all times pertinent to this lawsuit that they were employees coming within the scope of the Fair Labor Standards Act of 1938 as amended, Title 29, Chapter 8, U. S. Code Annotated; and in particular Sections 206, 207, and 216 of said Act. Plaintiffs would further show that their employer, the Lubbock Compress Company has wrongfully withheld wages due and owing to them under the provisions of this Act.

III.

Plaintiff R. A. Peacock would show that from March 1, 1954, to March 1, 1956 he was paid $.75 an hour for 76 hours

per week. He would further show that he in fact worked 84 hours per week. That he was paid no overtime for the 44 hours in excess of 40 hours as provided by Title 29, Chapter 8, Section 207, and in fact he was not given any compensation whatsoever for 8 of these hours. Wherefore, he sues this defendant, the Lubbock Compress Company, for the sum of $2,340.00.

IV.

Plaintiff H. J. Wilson would show that he was employed by Lubbock Compress Company from March 1, 1954 to December 6, 1955 and was paid $.75 an hour for 76 hours per week. He would further show that he in fact worked 84 hours per week. That he was paid no overtime for the 44 hours in excess of 40 hours as provided by Title 29, Chapter 8, Section 207, and in fact he was not given any compensation whatsoever for 8 of these hours. Wherefore, he sues this defendant, Lubbock Compress Company, for the sum of $2,115.00.

V.

Plaintiff M. L. Coffer would show thah he was employed by Lubbock Compress Company from December 6, 1955, to March 1, 1956, and was paid $.75 an hour for 76 hours per week. He would further show that he in fact worked 84 hours per week. That he was paid no overtime for the 44 hours in excess of 40 hours as provided by Title 29, Chapter 8, Section 207, and in fact he was not given any compensation whatsoever for 8 of these hours. Wherefore, he sues this defendant, Lubbock Compress Company, for the sum of $270.00.

VI.

Plaintiffs would further show that they are entitled to an amount equal to their unpaid minimum wages as provided by Title 29, Chapter 8, Section 216, subsection B, U.S.C.A., therefore, plaintiff R. A. Peacock sues the defendant, Lubbock Compress Company for the additional sum of $2,340.00; and plaintiff M. L. Coffer sues the defendant, Lubbock Compress Company for the additional sum of $270.00; and plaintiff H. J. Wilson sues the defendant for the additional sum of $2,115.00.

VII.

Plaintiffs would further show that they have agreed and contracted to pay their attorneys the sum of $3,500.00, attorneys fees, and that the defendant, Lubbock Compress Company, is obligated to pay these plaintiffs reasonable attorneys fees by virtue of Title 29, Chapter 8, Section 215, Subsection B, U.S.C.A., and plaintiffs would show that the sum of $3,500.00 will be a reasonable attorneys fee in this case, therefore, plaintiffs sue this defendant for the further sum of $3,500.00, being reasonable attorneys fee due them under the Fair Labor Standards Act.

WHEREFORE, premises considered, plaintiffs pray that defendant be cited to appear and answer herein, and that upon a trial of this cause that plaintiff R. A. Peacock receive and recover the sum of $2,340.00 as back wages due and owing him, and the additional sum of $2,340.00 liquidated damages as provided by the Fair Labor Standards Act; and plaintiff H. J. Wilson receive and recover the sum of $2,115.00 back wages due and owing him, and the

additional sum of $2,115.00 liquidated damages; and plaintiff M. L. Coffer receive and recover the sum of $270.00 back wages due and owing him by this defendant, and the sum of $270.00 liquidated damages, and plaintiffs further pray that they recover the sum of $3,500.00 reasonable attorneys fees, and for such other and further relief to which they may be justly entitled either at law or in equity and for which they will ever pray.

HUFF & SPLAWN
P. O. Box 506
Lubbock, Texas

(Signed) By ERIN ROUNTREE
Attorneys for Plaintiffs

COMES NOW the plaintiffs in the above styled and numbered cause, and demands a trial by jury of all the issues in said cause, under the provisions of Rule 38-B of the Federal Rules of Civil Procedure and respectfully requests that this cause be placed on the jury docket, with the understanding that a copy of this demand will be served upon the above named defendant through duly issued and executed service of process.

HUFF & SPLAWN
(Signed) By ERIN ROUNTREE
ATTORNEYS FOR PLAINTIFF

ANSWER OF THE DEFENDANT, LUBBOCK COMPRESS COMPANY

(Number and Title Omitted)

Filed: Aug. 16, 1956

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the defendant, LUBBOCK COMPRESS COMPANY, and makes and files this its answer to plaintiffs' original complaint, and would show the Court as follows, to-wit:

1.

With respect to Paragraph 1 of plaintiffs' complaint, this defendant is without knowledge as to the residence of the plaintiffs, but does admit that Lubbock Compress Company is a corporation, and that its principal place of business is in Fort Worth, Tarrant County, Texas.

2.

The allegations contained in Paragraph 2 of plaintiffs' complaint are denied, with the exception that it is admitted that the three named employees have at one time or another been employees of the Lubbock Compress Company, and Lubbock Compress Company specifically denies that it has wrongfully withheld wages due and owing to them under the Fair Labor Standards Act.

3.

The defendant, Lubbock Compress Company, denies the allegations contained in Paragraph 3 of plaintiffs' complaint, and states that it is not indebted to R. A. Peacock by reason of the wrongful withholding of wages due under the Fair Labor Standards Act.

4.

The defendant, Lubbock Compress Company, denies the allegations contained in Paragraph 4 of plaintiffs' complaint, and states that it is not indebted to H. J. Wilson by reason of the wrongful withholding of wages due under the Fair Labor Standards Act.

5.

The defendant, Lubbock Compress Company, denies the allegations contained in Paragraph 5 of plaintiffs' complaint, and states that it is not indebted to M. L. Coffer by reason of the wrongful withholding of wages due under the Fair Labor Standards Act.

6.

The allegations contained in Paragraph 6 of plaintiffs' complaint are denied.

7.

The allegations contained in Paragraph 7 of plaintiffs' complaint are denied.

WHEREFORE, premises considered, defendant, Lubbock Compress Company, prays that plaintiffs take nothing by reason of this suit and that upon final hearing hereof defendant go hence without day and recover its costs.

CANTEY, HANGER, JOHNSON,
SCARBOROUGH & GOOCH

(Signed) By J. A. GOOCH
1500 Sinclair Building
Fort Worth 2, Texas
Attorneys for Defendant
Lubbock Compress Company

A copy of the foregoing answer to the defendant, Lubbock Compress Company, has been this the 15 day of August, A. D. 1956, placed in the United States Mail, postage prepaid, addressed to Messrs. Huff & Splawn, P. O. Box 506, Lubbock, Texas.

(Signed) J. A. GOOCH
J. A. Gooch

FIRST AMENDED ANSWER OF THE DEFENDANT, LUBBOCK COMPRESS COMPANY

(Number and Title Omitted)

Filed: Sept. 7, 1956

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the defendant, LUBBOCK COMPRESS COMPANY, with leave of the Court first obtained, and makes and files this its amended answer to plaintiffs' complaint, and would show to the Court as follows, to-wit:

1.

With respect to Paragraph I of plaintiffs' complaint, this defendant is without knowledge as to the residences of the plaintiffs, but does admit that Lubbock Compress Company is a corporation and that its principal place of business is in Fort Worth, Texas.

2.

With respect to Paragraph II of plaintiffs' complaint, defendant admits that the plaintiffs were at one time employed by Lubbock Compress Company as night watchman and admits that Lubbock Compress Company is engaged exclusively in the compressing of cotton. The defendant admits that at times it is engaged in the flow of interstate commerce. Defendant further admits that at times pertinent to this lawsuit the three above named employees, to-wit, R. A. Peacock, M. L. Coffer and H. J. Wilson, came

within the scope of the Fair Labor Standards Act of 1938 as amended, being Title 29, Chapter 8, U. S. Code Annotated, and in particular Section 207 of said Act. Defendant specifically denies, however, that it has wrongfully withheld wages due and owing them under the provisions of the Act.

3.

With respect to Paragraph III of plaintiffs' complaint, defendant would show to the Court that R. A. Peacock was paid 75c per hour for 76 hours per week during the weeks he worked 76 hours from March 1, 1954 to March 1, 1956, and will also admit that in some weeks during such period he worked 84 hours per week, but denies that he was not paid overtime and would show that in all weeks during such period when he worked 76 hours per week he was paid 36 hours per week overtime, which was not necessary under Section 207 of said Act, and, as a matter af fact, plaintiff R. A. Peacock has received all of the compensation from Lubbock Compress Company he was entitled to by reason of work done for it. This defendant denies that Lubbock Compress Company is indebted to plaintiff R. A. Peacock in the sum of $2340.00 or any other sum.

As further answer and exception to the claim of R. A. Peacock, this defendant would show that R. A. Peacock is entitled to recover, if at all, for wages due, if any, within two years from the date of the filing of this suit, which defendant alleges to be, based on the record in this case, July 21, 1956. Therefore, claim for any work performed prior to July 21, 1954, is barred by the two-year Statute of Limitations of the State of Texas, and said statute of

limitations is plead in bar of any right of plaintiff to recover for any work performed prior to July 21, 1954, and of this exception defendant prays judgment of the Court.

4.

With respect to Paragraph IV of plaintiffs' petition, defendant admits that plaintiff H. J. Wilson was employed by Lubbock Compress Company from March 1, 1954, to December 6, 1955, at a salary of 75c per hour for 76 hours per week, and admits further that some weeks during such period plaintiff H. J. Wilson worked 84 hours per week. But defendant denies that H. J. Wilson was not paid overtime, and affirmatively alleges that in all weeks wherein H. J. Wilson worked as much as 76 hours per week, he was paid overtime for 36 hours per week.

Defendant further states that according to Title 29, Chapter 8, Section 207, the plaintiff H. J. Wilson has been paid for all time he worked for Lubbock Compress Company, and denies that Lubbock Compress Company is indebted to the plaintiff H. J. Wilson in the sum of $2,115.00 or any other sum of money.

Further with respect to Paragraph IV of plaintiffs' complaint, defendant Lubbock Compress Company says that H. J. Wilson is not entitled to recover any claim he may have against Lubbock Compress Company for work done or wages due prior to July 21, 1954, for the reason that any claim for any work performed prior to July 21, 1954, is barred by the two-year statute of limitations of the State of Texas, which the defendant pleads in bar of plaintiff's right to recover. The summons in this case shows on its face that

this suit was filed on July 21, 1956; therefore, any claim for wages due for work performed prior to July 21, 1954, which was two years prior to the date this suit was filed, is barred by the two-year statute of limitations of the State of Texas, and of this exception defendant prays judgment of the Court.

5.

With respect to Paragraph V of plaintiffs' complaint, the defendant admits that M. L. Coffer was employed by Lubbock Compress Company from December 6, 1955, to March 1, 1956, and was paid 75c per hour for 76 hours per week. Defendant further admits that in some weeks plaintiff M. L. Coffer worked as much as 84 hours per week. Defendant denies that M. L. Coffer was paid no overtime, and expressly alleges that M. L. Coffer in the weeks in which he worked 76 hours or more was paid overtime for 36 hours, but further alleges that because of Section 207 of Chapter 8, Title 29, U. S. Code Annotated, plaintiff M. L. Coffer has been paid in accordance with such section and therefore plaintiff is not entitled to any recovery from this defendant.

6.

With respect to Paragraph VI of plaintiffs' petition, this defendant would show that plaintiffs are not entitled to avail themselves of the provisions of Title 29, Chapter 8, Section 216, for the reason that plaintiffs have been paid all that is due them by Lubbock Compress Company.

7.

With respect to Paragraph VII of plaintiffs' complaint, defendant denies that it is obligated to pay any attorneys' fees by reason of Section 215, Chapter 8, Title 29, U.S.C.A.

WHEREFORE, premises considered, defendant prays that on final hearing hereof it go hence without day and that plaintiffs be denied recovery; that plaintiffs' attorneys be denied recovery of attorneys' fees, and that defendant recover all costs in its behalf expended.

CANTEY, HANGER,
JOHNSON,
SCARBOROUGH AND GOOCH

(Signed) By J. A. GOOCH
J. A. Gooch
1500 Sinclair Building
Fort Worth 2, Texas
Attorneys for Defendant
Lubbock Compress Company.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The defendant Lubbock Compress Company is and was engaged during all of the times alleged in plaintiffs' complaint in the first process of compressing cotton and therefore is not and was not subject to the provisions of Subsection (a) of Section 207, Title 29, Chapter 8, U. S. Code Annotated, and therefore plaintiffs are not entitled to re-

cover against the defendant herein, for the reason that the defendant, because of the nature of its work, was expressly exempt from the provisions of Subsection (a) of Section 207, Title 29, U. S. Code Annotated, and defendant should go hence without day and recover all costs in its behalf expended.

SECOND DEFENSE

This defendant would further show to the Court that the wages paid to plaintiffs were paid to plaintiffs and accepted by plaintiffs by reason of a contract between plaintiffs and defendant whereby plaintiffs agreed to perform the work for defendant for the sum of money received by them, and by reason of the express contract between plaintiffs and defendant, plaintiffs are estopped to assert claims herein, and defendant should be discharged from liability to such plaintiffs.

THIRD DEFENSE

This defendant says that all claims of plaintiffs for work performed and all pay therefor accruing to plaintiffs prior to July 21, 1954, are barred by the two year statute of limitations of the State of Texas, as per Article 5526, Revised Civil Statutes of Texas, and defendant pleads such statute in bar to any cause of action or alleged cause of action arising prior to July 21, 1954, inasmuch as this suit was not filed until July 21, 1956, and therefore said statute applies to any recovery for work done and wages with respect thereto occurring prior to July 21, 1954.

ALTERNATIVE DEFENSE

This defendant would show to the Court that in the event it is mistaken with respect to its defenses designated First and Second hereinabove set forth, then it would show to the Court as follows:

That shortly prior to July 1, 1956, and prior to the time this suit was filed, the Wages and Hours Administration of the United States Department of Labor made an audit of the payroll of Lubbock Compress Company and determined in said investigation and audit that the plaintiffs in the above entitled and numbered cause were entitled to the following amounts and only the following amounts representing, according to said administrative body, back pay, as follows:

M. L. Coffer, 1907 E. 16th Street, Lubbock, Texas, for the period 12 9 55 to 2 29 56, the sum of $54.00.

R. A. Peacock, 616 K Avenue, Apartment A, Lubbock, Texas, for the period 5 21 54 to 2 29 56, the sum of $279.00.

H. J. Wilson, Route 4, Lubbock, Texas, for the period 5 21 54 to 12 2 55, the sum of $225.00.

This defendant, although not in accord with such administrative determination, but in an effort to avoid the expense and cost of litigation, made a bona fide tender of such amounts to the plaintiffs and each of them, and the plaintiff, H. J. Wilson, has executed a release to defendant on the forms prepared therefor by the United States Department of Labor, Wages and Hours Administration, and

the plaintiffs Peacock and Coffer have in their possession and have so had in their possession the tender in the amounts hereinabove set forth opposite their names, and releases with respect thereto, since on or about July 5, 1956, and long prior to the institution of this suit, which said tenders and releases have not been returned but have been continuously held by said plaintiffs from and since the date above alleged. Therefore, the plaintiffs have, by their acceptance and retention of the tender of payment as hereinabove described, released defendant of all liability, and since tender has been made for amounts in excess of that to which these plaintiffs are entitled by law, plaintiffs' attorneys are not entitled to recover attorneys' fees, and, by the same token, plaintiffs are not entitled to recover in any amounts in excess of the tender made.

WHEREFORE, premises considered, defendant prays that on final hearing hereof it go hence without day and that plaintiffs and their attorneys recover nothing, and that the defendant Lubbock Compress Company recover all costs in its behalf expended.

CANTEY, HANGER,
JOHNSON
SCARBOROUGH & GOOCH

(Signed) By J. A. GOOCH
J. A. Gooch
1500 Sinclair Building
Fort Worth 2, Texas
Attorneys for Defendant.

Copy of the foregoing amended answer is being served on plaintiffs' counsel, Messrs. Huff & Splawn, P. O. Box 506, Lubbock, Texas, by depositing same in the United States Mail, postage prepaid, this the 6th day of September, 1956.

(Signed) J. A. GOOCH
J. A. Gooch

PLAINTIFF'S REQUEST FOR ADMISSIONS OF FACT

(Number and Title Omitted)

Filed: August 31, 1956

TO: CANTEY, HANGER, JOHNSON, SCARBOROUGH & GOOCH, ATTORNEYS FOR DEFENDANT

Plaintiffs, R. A. Peacock, et al hereinafter requests the defendant, Lubbock Compress Company, in accordance with Rule 36 of the Federal Rules of Civil Procedure to admit the following matters of fact for the purpose of such action only and subject to all proper objections to admissibility which may be made at the trial; such admissions to be made in writing within ten days from the date of the receipt of this request and such admissions of fact to be used in the above styled and numbered cause.

1. That from March 1, 1954 to March 1, 1956 that R. A. Peacock was an employee of the defendant herein.

2. That from March 1, 1954 to March 1, 1956 that R. A. Peacock's wages were $.75 per hour.

3. That from March 1, 1954 to March 1, 1956 that R. A. Peacock worked 76 hours per week for this defendant.

4. That from March 1, 1954 to March 1, 1956 that R. A. Peacock worked 84 hours per week for this defendant.

5. That from March 1, 1954 to March 1, 1956 that R. A. Peacock was not paid by this defendant for any overtime.

6. That between March 1, 1954 and March 1, 1956 that R. A. Peacock did not receive time and a half for all hours worked over 40 hours per week.

7. That from March 1, 1954 to December 6, 1955 that H. J. Wilson was an employee of Lubbock Compress Company.

8. That from March 1, 1954 to December 6, 1955 that H. J. Wilson was paid 75c per hour for working for the defendant herein.

9. That from March 1, 1954 to December 6, 1955 that H. J. Wilson worked 76 hours per week for this defendant.

10. That from March 1, 1954 to December 6, 1955 that H. J. Wilson worked 84 hours per week for this defendant.

11. That from March 1, 1954 to December 6, 1955 that H. J. Wilson was not paid time and a half for all hours in excess of 40 hours work per week.

12. That from December 6, 1955 to March 1, 1956 that M. L. Coffer was employed by Lubbock Compress Company.

13. That from December 6. 1955 to March 1, 1956 that M. L. Coffer's wages was 75c per hour while working for this defendant.

14. That from December 6, 1955 to March 1, 1956 that M. L. Coffer worked 76 hours per week.

15. That from December 6, 1955 to March 1, 1956 that M. L. Coffer worked 84 hours per week for this defendant.

16. That from December 6, 1955 to March 1, 1956 that M. L. Coffer was not paid time and a half for all hours worked per week in excess of 40 hours.

17. That $3,500.00 would be a reasonable attorneys fees for representing three different plaintiffs in this case.

18. That the defendant is engaged in work and materials that are in Interstate Commerce.

19. That the defendant is engaged in work which effects Interstate Commerce.

20. That the employment of the three plaintiffs was subject to the Fair Labor Standards Act of 1938.

True and correct copies of the above has been mailed to the U. S. District Clerk of Lubbock Division, Lubbock, Texas, for filing in this cause on this date, and I certify

that the above original copy of request for admissions was delivered to the above named defendant on this the 30th day of August, 1956, by mailing same to Cantey, Hanger, Johnson, Scarborough & Gooch, attorneys for defendant, by U. S. Certified Mail, return receipt requested.

Respectfully submitted
HUFF & SPLAWN
P. O. BOX 506
LUBBOCK, TEXAS

(Signed) By BILL DAVIS
ATTORNEY FOR PLAINTIFFS

ANSWERS OF DEFENDANT TO PLAINTIFFS' REQUEST FOR ADMISSIONS OF FACT

(Number and Title Omitted)

Filed: Sept. 7, 1956

Comes now LUBBOCK COMPRESS COMPANY, defendant in the above entitled and numbered cause, and in response to Request for Admissions in accordance with Rule 36, filed by plaintiffs and received by defendant's counsel on September 1, 1956, makes and files this its answers to plaintiffs' Request and as follows, to-wit:

1. The facts set forth in plaintiffs' Request No. 1 are admitted by the defendant.

2. The facts set forth in Request No. 2 are admitted.

3. The facts set forth in Request No. 3 are admitted.

4. It is admitted that in some weeks from March 1, 1954, to March 1, 1956, R. A. Peacock worked 84 hours per week for this defendant. However, at the present time all records have not been examined and this defendant will, as soon as possible, make known to plaintiffs' counsel complete answers with respect to this request.

5. The purported facts set forth in Plaintiffs' Request No. 5 are denied.

6. Defendant says that the purported facts set forth in Request No. 6 are not admitted, and, for further answer thereto, defendant says that R. A. Peacock received time and a half for 36 hours per week when R. A. Peacock worked 76 hours or more per week during the period in question.

7. The facts set forth in plaintiffs' Request No. 7 are admitted.

8. The facts set forth in Request No. 8 are admitted.

9. The facts set forth in Request No. 9 are admitted.

10. In at least some of the weeks set forth in Request No. 10 H. J. Wilson worked 84 hours per week for the defendant.

11. From March 1, 1954 to December 6, 1955, H. J. Wilson was paid time and a half for 36 hours per week when he worked 76 hours per week or more.

12. The fact set forth in Request No. 12 is admitted.

13. The fact set forth in Request No. 13 is admitted.

14. The fact set forth in Request No. 14 is admitted.

15. It is admitted that in some weeks between December 6, 1955 and March 1, 1956, M. L. Coffer may have worked 84 hours per week for this defendant.

16. From the period December 6, 1955, to March 1, 1956, M. L. Coffer was paid time and a half for 36 hours per week when he worked 76 hours or more per week.

17. The purported fact set forth in Request No. 17 is denied and in fact, no attorneys' fee is due, because tender in excess of the amount due plaintiffs was made by this defendant prior to the institution of this lawsuit.

18. In answer of Request No. 18, the defendant at times is engaged in work and materials that are in interstate commerce, but its work is subject to the exceptions as contained in the Fair Labor Standards Act.

19. In answer to Request No. 19, the defendant is at times engaged in work which affects interstate commerce, but is subject to the exceptions concerning its work as set forth in the Fair Labor Standards Act.

20. The employment of the three plaintiffs was subject to the Fair Labor Standards Act of 1938, the amendments thereto and the exceptions therein contained.

Respectfully submitted,

CANTEY, HANGER,
JOHNSON, SCARBOROUGH
& GOOCH

(Signed) By J. A. GOOCH
J. A. Gooch

1500 Sinclair Building
Fort Worth 2, Texas
Attorneys for Defendant.

THE STATE OF TEXAS,)
)
COUNTY OF TARRANT.)

Before me, the undersigned authority, on this day personally appeared J. A. GOOCH, who on oath states that he is one of the attorneys of record for the defendant and is authorized to make this affidavit; that the matters contained in the foregoing answers of defendant to plaintiffs' Request for Admissions are true.

(Signed) J. A. GOOCH
J. A. Gooch

Subscribed and sworn to before me this the 5th day of September, 1956.

(Signed) ALMA CARNER
Notary Public in and for Tarrant County, Texas.

(SEAL)

A copy of the foregoing answers to plaintiffs' request for admissions was this the 6th day of September, 1956, mailed to plaintiffs' attorneys, who are Huff & Splawn, P. O. Box 506, Lubbock, Texas, the original of such answers being mailed on the same date to the Clerk of the United States District Court for the Northern District of Texas, Lubbock Division, at Lubbock, Texas.

(Signed) J. A. GOOCH
J. A. Gooch

In The District Court of The United States
For the Northern District of Texas
Lubbock Division

Civil Action No. 2121

R. A. Peacock, Et Al

versus

Lubbock Compress Company

APPEARANCES

For the Plaintiff:

Huff & Splawn
Attorneys at Law
817½ Broadway
Lubbock, Texas
By: Denzil Bevers

For the Defendant:

Cantey, Hanger, Johnson,
Scarborough & Gooch
Attorneys at Law
Sinclair Building
Fort Worth 2, Texas
By: Mr. Gooch

ORAL DEPOSITION OF:

MR. CLAY YOUNGKIN

Oral deposition of Mr. Clay Youngkin, taken on behalf of the Plaintiff, before Curtis D. Ruff, a notary public in and for Lubbock County, Texas, in the Jury Room for the 140th District Court, Court House, Lubbock, Texas, at 9:00 A. M., Friday, November 16, 1956.

I certify that this deposition is taken by agreement of counsel for both parties, the giving of notice and the issuance of formal commission being hereby waived; and it is understood that this deposition, when offered in evidence upon the trial of said cause, shall be subject to all legal objections, the same as if the witness were present personally and testifying in court in said cause.

It is further agreed that the signature of Mr. Clay Youngkin to his deposition is hereby waived, and that the deposition may be filed in the District Court of the United States for the Northern District of Texas, Lubbock Division, for the use of either party.

MR. CLAY YOUNGKIN,

having been first duly sworn, testified on direct examination by Mr. Bevers as follows:

Q For the record, state your name, please, sir?

A Clay Youngkin.

Q Mr. Youngkin, what position do you hold with Lubbock Compress?

A I'm the superintendent of the Lubbock Compress.

Q And how long have you held that position?

A Since first of July of '52, I think.

Q And as the superintendent out there, Mr. Youngkin, tell us in a general way your duties out there?

A I supervise everything.

Q That would include the employees, the records and all of the work out there?

A That's correct.

Q They would all be directly under your supervision?

A That's right.

Q And as supervisor out there are you responsible for the hiring of the employees?

A I hire the employees, yes, sir.

Q Then from that statement I assume that you hired the plaintiffs in this case, R. A. Peacock, H. J. Wilson and M. L. Coffer.

A I hired — I rehired Mr. Peacock. He was working there when I took charge.

Q I see.

A I hired Mr. Wilson and hired Mr. Coffer.

Q Mr. Youngkin, in a general way explain the work or the processes out there at the Lubbock Compress.

A We compress cotton, we warehouse and compress cotton for shipment.

Q Now, then, that cotton, generally, how is it brought to your compress?

A Brought to our compress in trucks and in cars.

Q From where, sir?

A From — well, just a general territory or could be for miles.

Q I'm getting at this, is it brought from gins --

A From gins —

Q — by themselves?

A — and yards.

Q And other compress storages —

A Other warehouses —

Q — and warehouses?

A — and storage.

Q Do you do any ginning there?

A No, sir.

Q Let me get this straight. Those who bring the cotton to you furnish their own transportation to you?

A Well, those that come in on the rail and in cars, I wouldn't know whether that they would furnish their own transportation but they do pay the freight on the cotton.

Q I mean by that, your company does not send out trucks nor pay the freight and so forth?

A No, sir.

Q And how long would you say that cotton might remain there in storage?

A Well, it depends, some cotton may stay there for quite many years.

Q Before being compressed?

A No, we compress it and then store it.

Q I see.

A But we've got cotton there that's been there since '42.

Q And that belongs to whom?

A Well, I just couldn't tell you. We had insured receipts out against it and those are negotiable insurance receipts and they might change hands a dozen times. I just couldn't tell you the owner of them until the receipts come back to our plant for shipment.

Q And where, generally, do you ship it?

A All over the world.

Q Now, then, in hiring, I believe, Mr. Wilson and Mr. Coffer and rehiring Mr. Peacock, just what were the circumstances generally surrounding that?

A Well, of course, they was working through this 76 hours about a year before they claimed any compensation back. I had three watchmen working for me, they were working 56 hours a week and I was paying those watchmens 75 cents for 40 hours and I was paying them a dollar and twelve and a half cents for the other 16 hours, and one of my watchmens passed out — passed away, old man Kilpatrick, I believe was his name, and that throwed me with two watchmens and I was to hire another watchman and take his place. Mr. Wilson and Mr. Peacock made a special trip down there to see me and called me in my private office and asked me would I consider them taking the watch job over and paying them approximately the same money that I paid the three watchmens. Well, I studied it over and pretty easy going and I told them that I would consider that and I explained to them when it was done that I could not pay them 84 hours, that $70.50 is all I could pay them to equal the three watchmens' time. So they agreed to that, they more than agreed to it and I told them that they would have to work the watch job which is 12 hours a night, would be 84 hours a week and they agreed for that. So from then on I paid them at the rate of 76 hours, that would be 40 hours at 75 cents would be $30.00, and that would be 36 hours at $1.12½ would be $40.50, that would be $70.50 what we paid them for the time they worked. Now, that's gross we paid, we didn't take — we didn't have anything to do with that.

Q Now, when Mr. Coffer went to work — he went to work was after Mr. Wilson broke his leg?

A He went to work after Mr. Wilson broke his leg and he was only working extra in Mr. Wilson's place.

Q I see. Does the compress out there operate generally the year round?

A Yes, sir.

Q Then you keep other employees besides the watchmen all year round?

A Oh, yes, we have salaried men and we have laborers that we keep the year round.

Q And your company charges for the storage and for the compress?

A That's exactly right. That's where we get our revenue.

Q And the general duties of these night watchmen — what generally are they?

A We have watchmen's clocks, they patrol a certain area of the plant every thirty minutes and they punch that clock, that's our record, that's the only way we can know where the watchmens are, and they are to keep people off of the premises, watch for fire, or anything, any disorder around there they're in charge, you might say, to take care of the plant while they're on duty.

Q In other words, a big problem around a cotton warehouse and gins is fire, is it not?

A Fire, yes, sir, and what causes these fires is these — I don't know what — them rum hounds, I think. They go in there and bed up, you know, and never think about matches or anything, you know, what causes those.

Q They're present there to keep those fellows out of there and to also watch for fires?

A That's exactly right.

Q And, of course, generally, to prevent any theft or anything else from happening there during the night hours?

A That's what they're there for, yes, sir.

Q And I suppose your insurance — your fire insurance rates are based on whether you have or do not have watchmen there?

A Well, if we didn't have watchmen, we wouldn't have insurance, you might say, because of insurance regulations.

Q Now, then, from these clocks they punch you are able to determine whether they are or are not on duty there?

A That's right.

Q And I have here a photostatic copy of the — R. A. Peacock's Social Security withholding tax statement and it reflects from March the 1st of 1954 up until March the first of 1956, that — strike that. I don't believe it shows that, I seem to see some places here toward the — all right, let me re-phrase the question. Mr. Peacock's withholding statement shows from March the 1st of '54 until March the 1st of '56 that he worked generally 76 hours a week.

A That's right.

Q And I believe that the record also reflects that in September of 1955, that he missed one week's work?

A That's correct.

Q Could you tell me, sir, whether or not that your other records — clock records reflect that he worked 84 hours during all those weeks in which he is shown on this statement to have worked 76?

A Well, our clock records are used more than by the night watchmen. We have relief watchmen that come on and pick up the clock and punch until the day crew comes on. You see a night watchman gets off at six o'clock. We have a man there at six o'clock to punch until eight o'clock, then we have men there to punch Sundays and all holidays,

that would still show on those dials that the watchmens punch on. We only change clocks once a day.

Q Well, sir, let me ask it this way. Is it your testimony that Mr. Peacock worked 84 hours a week each week during those dates that I've inquired about where it's shown that he had 76 hours on the payroll?

A Yes, sir, he worked 84 hours.

Q And he was paid for 76 hours?

A He was paid for 76 hours.

Q And would the same thing apply to Mr. Wilson and Mr. Coffer?

A That's right.

Q Then at any time that your record reflects he worked — that each of them worked 76 hours, they, in fact, worked 84 hours?

A That's right.

Q And each of them were paid for 76 hours?

A That's right.

Q And it's your tetimony that they were paid 75 cents an hour for the first 40 hours —

A That's right.

Q — and a dollar, twelve and a half cents for the next 36?

A That's right.

Q And received no compensation for the additional 8 hours?

MR. GOOCH:

Now, we object to that. You are taking this under commission so I assume we will have to make our objections —

MR. BEVERS:

You may object —

MR. GOOCH:
— now or reserve them —

MR. BEVERS:
Whatever is proper.

MR. GOOCH:
Well, my objection is that your question is a mixed question of law and fact, for the reason that it is the contention as shown by the pleadings of the case that the defendant in this case was not subject to overtime payments, and therefore a payment of 75 cents per hour for all the hours worked would comply with the statute, so I want to interpose that objection.

Q Well, we'll place it this way then. Hypothetically, if they received 75 cents an hour for 40 hours and a dollar, twelve and a half for 36 hours, that would be a total of $70.50, would it not, sir?

A That's what I paid them each week.

Q Now, do you know whether or not a representative of the Wage and Hour Division of the Department of Labor made a check of your records regarding these particular plaintiffs?

A Yes, sir, I do know they did.

Q Did you assist them in that?

A Assist who?

Q The Wage and Hour —

A I gave him the records, all the records he asked for.

Q I see, sir. And do you know whether or not he arrived at any figure for these men?

A Well, I really do not. He — after he left there, he told me everything was in order, then I think that he sent

in a statement to his head office and they arrived at the figures which he made.

Q Now, is Mr. Peacock working for you now?

A No, sir.

Q Is Mr. Coffer?

A No, sir.

Q Is Mr. Wilson?

A No, sir.

Q Have you replaced them with other watchmen?

A Yes, sir.

Q And what wages are your watchmen now drawing?

MR. GOOCH:

We object to that as wholly irrelevant and immaterial to any issue in this case as to what the watchmen are drawing now.

MR. BEVERS:

He may go ahead and answer, may he not?

A Watchmens are drawing a dollar an hour now but the wages — the hours are cut to 40 hours a week.

Q They are working only 40 hours?

A That's right.

Q And how many watchmen do you employ now?

A Four — five.

Q Did you go to a dollar an hour on or about March the first of this year?

A I went to a dollar an hour on March the first, not about but on.

Q Mr. Youngkin, will you make available these Social Security and withholding tax returns of the three plaintiffs in this case at the time of trial?

A Well, those records are kept in our Fort Worth office

Q I'm speaking about these photostatic copies we have here.

MR. GOOCH:
I'll make them available.

MR. BEVERS:
I believe that's all the questions I have.

MR. GOOCH:
That's all, I have no questions.

(Signature waived.)

JUDGMENT

Filed and Entered: July 15, 1957

In the District Court of the United States
For the Northern District of Texas
Lubbock Division

Civil Action No. 2121

R. A. Peacock, M. L. Coffer and H. J. Wilson,
Plaintiffs,

versus

Lubbock Compress Company,
Defendant.

BE IT REMEMBERED that on April 30, 1957 there came on to be heard the above entitled and numbered cause; all plaintiffs appeared in person and by and through their attorneys of record; the defendant appeared by and through its attorney of record; a jury theretofore demanded was expressly waived in open court by all parties, and it was agreed in open court by all parties that such cause could be heard and determined by the court without the intervention of a jury. Thereupon the court heard the pleadings, the stipulations of the parties, the evidence and the argument of counsel, and at the conclusion thereof took said cause under advisement for future decision and after a study of the case determined that the defendant, Lubbock Compress Company, during the times mentioned in plain-

tiffs' petition was engaged exclusively in the first processing of the compressing of cotton, and by reason thereof was exempt from the overtime provisions of Section 207(a) of Title 29, United States Code Annotated, and that since the plaintiffs had been paid for all hours worked by them during such period a sum equivalent to or in excess of the minimum wage standards applicable to such period, plaintiffs were not entitled to recover from the defendant.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that the plaintiffs, R. A. Peacock, M. L. Coffer and H. J. Wilson, and their attorneys of record take nothing by virtue of said suit against the defendant, Lubbock Compress Company, and that the defendant, Lubbock Compress Company, go hence without day and recover of and from the plaintiffs all costs in its behalf expended.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the court that all costs in said cause be, and are hereby taxed against the plaintiffs, jointly and severally, for which let the Clerk of this court have execution.

DONE this 15th day of JULY, A. D. 1957.

(Signed) JOS. B. DOOLEY
United States District Judge
for the Northern District of
Texas, Lubbock Division

PLAINTIFF'S MOTION FOR NEW TRIAL

(Number and Title Omitted)

Filed: July 20, 1957

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the plaintiffs, R. A. Peacock, M. L. Coffer, and H. J. Wilson, in the above entitled and numbered cause and pursuant to Rule 59 of the Federal Rule of Civil Procedure, files this their motion for a new trial and would show the Court as follows:

I.

Plaintiffs would show that the Court erred in rendering judgment on the defendant herein on the erroneous principle that the defendant herein was exempt from Section 207a of Title 29, United States Code Annotated.

II.

Plaintiffs would show that the Court erred in holding that the defendant had paid the plaintiffs a sum equivalent to or in excess of the minimum wage standards applicable to such period as provided by Section 206a of Title 29, United States Code Annotated.

III.

Plaintiffs would show that the Court erred in holding that the defendant was exempt from the provisions of Sec-

tion 207a of Title 29, United States Code Annotated, by virtue of such section C of the aforementioned statute.

IV.

Plaintiffs would show that the Court erred in receiving into evidence the letter from some purported U. S. Department of Labor employee giving his opinion as to whether or not the defendant was subject to Section 206a and 207a of Title 29, United States Code Annotated.

WHEREFORE, PREMISES CONSIDERED, plaintiffs pray that the judgment of the Court, heretofore entered, be set aside and that the plaintiffs be given a new trial and the judgment of the Court be declared void and of no force in effect.

Respectfully Submitted,
HUFF & SPLAWN

(Signed) By BILL DAVIS
Bill Davis

Plaintiff's motion for new trial has this the 16th day of July, A.D., 1957, been served on Cantey, Hanger, Johnson, Scarborough and Gooch, 1500 Sinclair Building, Fort Worth 2, Texas, attorneys for defendant herein by mailing same to above address by registered mail.

HUFF & SPLAWN
P. O. BOX 506
LUBBOCK, TEXAS

(Signed) By BILL DAVIS
Bill Davis

PLAINTIFF'S MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Number and Title Omitted)

Filed: July 20, 1957

NOW COMES the plaintiffs by and through their attorneys of record and files this their motion for Findings of Fact and Conclusions of Law as provided by Rule 52 of the Federal Rules of Civil Procedure and respectfully requests the Court as follows:

I.

Plaintiffs respectfully requests this Honorable Court to file its findings of fact relative to the following points:

1) Whether or not the minimum wage under Section 206a, Title 29, U.S.C.A. at all times incident to this lawsuit was 75¢ per hour.

2) The hourly wage paid these plaintiffs during the periods in controversy.

3) The rate of overtime paid the plaintiffs during the periods of controversy, if any.

4) The number of hours worked per week by each plaintiff during the periods in controversy.

5) Whether or not the defendant was engaged in ginning and compressing of cotton at all times incident to this litigation.

6) An amount that would be fair and reasonable attorney's fee on behalf of the plaintiffs in this cause.

7) Whether or not the defendant herein was engaged in the first processing, within the area of production, of any agricultural or horticultural commodity during the seasonal operation.

8) Whether or not at all times incident to this litigation the plaintiffs herein were employed within the area of production as defined by the administrator.

II.

In their motion for conclusions at law plaintiffs respectfully request this Honorable Court to file its conclusions of law as to the following matters:

1) That the defendant herein was or was not subject to Section 206a, Title 29, U.S.C.A.

2) That the defendant was or was not subject to Section 207a, Title 29, U.S.C.A.

3) That the defendant herein was or was not exempted from Section 207a, Title 29, U.S.C.A. by virtue of 207c, Title 29, U.S.C.A.

4) That the plaintiffs herein were or were not subject to Section 213a, Subsection 10, Title 29, U.S.C.A.

Respectfully Submitted,
HUFF & SPLAWN

(Signed) By BILL DAVIS
Bill Davis

Plaintiff's motion for findings of fact and conclusions of law has this the 16th day of July, A.D., 1957, been served on Cantey, Hanger, Johnson, Scarborough, & Gooch, 1500 Sinclair Building, Fort Worth 2, Texas, attorneys for defendant herein by mailing a copy of same to the above address by registered mail.

HUFF & SPLAWN
P. O. BOX 506
LUBBOCK, TEXAS

(Signed) By BILL DAVIS
Bill Davis

ORDER

(Number and Title Omitted)

Filed and Entered: August 20, 1957

On the 20th day of August, 1957, came on to be heard plaintiff's Motion for New Trial and also Plaintiff's Motion for Findings of Fact and Conclusions of Law and the court being of the opinion that both motions should be in all things overruled, it is,

THEREFORE ORDERED, ADJUDGED, AND DECREED that plaintiff's Motion for new trial and plaintiff's Motion for Findings of Fact and Conclusions of Law are overruled, to which action the plaintiff duly excepts.

(Signed) JOS. B. DOOLEY
JOSEPH B. DOOLEY,
U. S. District Judge

TRANSCRIPT OF PROCEEDINGS

In the District Court of the United States
For the Northern District of Texas
Lubbock Division

Civil Action No. 2121

R. A. Peacock, et al.,

Plaintiffs,

versus

Lubbock Compress Company.

Defendant.

APPEARANCES:

FOR THE PLAINTIFFS:

HUFF AND SPLAWN, Lubbock, Texas,
By: MR. BILL DAVIS.

FOR THE DEFENDANT:

CANTEY, HANGER, JOHNSON, SCARBOROUGH AND GOOCH, Lubbock, Texas,
By: MR. J. A. GOOCH.

STATEMENT OF FACTS

and proceedings with reference thereto, in the above styled and numbered cause before the Honorable Joseph B. Dooley, United States District Judge, presiding, beginning on Tuesday, April 30, 1957, at Lubbock, Texas.

PROCEEDINGS

MR. DAVIS:
The plaintiff is ready.

MR. GOOCH:
The defendant is ready.

THE COURT:
Proceed.

MR. DAVIS:
The plaintiff calls its first witness, Mr. Wilson.

MR. GOOCH:
Put the stipulations in first.

MR. DAVIS:
All right. We will read those into the record, then, first.

Now comes the parties, both plaintiff and defendant, by and through their attorneys of record, and stipulate as to the following facts for the purpose of this trial: that the defendant, Lubbock Compress Company, during the period March 1, 1954, to March 1st, 1956, was engaged exclusively and at all times in the compressing of cotton in Lubbock, Texas.

Mr. R. A. Peacock worked all weeks from March 1st, 1954, to March 1st, 1956, with the exception of the week ending September 16, 1955, or a total of 103 weeks; 21 of such weeks were worked prior to July 21, 1954, being two years prior to the date suit was filed and are barred by the

two-year statute of limitations. R. A. Peacock worked 82 weeks between July 21st, 1954, and March 1st, 1956; during such 82 weeks, R. A. Peacock worked 84 hours each week and received $70.50 each week for such work by reason of oral agreement between R. A. Peacock and the defendant, Lubbock Compress Company.

H. J. Wilson worked all weeks from March 1st, 1954, until December the 2nd, 1955, when he terminated by reason of a non-occupational injury. H. J. Wilson's continuous employment from March 1st, 1954, to December the 2nd, 1955, amounted to 92 consecutive weeks; 21 of such weeks were worked prior to July 21, 1954, and claim therefor is barred by the two-year statute of limitations. H. J. Wilson worked 71 weeks between July the 21st, 1954, and December the 2nd, 1955; during such 71 weeks H. J. Wilson worked 84 hours each week and received $70.50 per week by reason of oral agreement between H. J. Wilson and Lubbock Compress Company.

M. L. Coffer was employed ten consecutive weeks from December 16, 1955, to March 1st, 1956; during such ten weeks M. L. Coffer worked 84 hours each week and was paid therefor $70.50 each week by reason of oral agreement between M. L. Coffer and Lubbock Compress Company.

MR. DAVIS:
So stipulated?

MR. GOOCH:
That's so stipulated by the defendant.

THE COURT:

All right, proceed.

H. J. WILSON,

called by the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Would you state your name, please?

A H. J. Wilson.

Q Where do you live, Mr. Wilson?

A I live out here on Elgin, Sixty-third and Elgin.

Q In Lubbock?

A In Lubbock County, yes.

Q Are you the same Mr. Wilson who is a plaintiff in this case against Lubbock Compress Company?

A Yes.

Q Now, did you ever work for the Lubbock Compress Company?

A Yes, sir, sure did.

Q When was the last time you worked out there?

A Well, the last time I worked was — well, it was in '57, the last time, but when I worked, just two of us was — the last time I worked was the 6th of December in '55.

Q All right, sir. On July the 21st, 1954, were you working for the Lubbock Compress Company?

A Sure was.

Q What was your job with the Lubbock Compress Company?

A Night watching.

Q What were your duties as a night watchman?

A For fires.

Q Sir?

A Fires.

Q Watching out for fires and things of that nature?

A Yes, sir.

Q Now, up until December the 6th of 1955, when you left out there, what were your hours of work?

A Well, I worked twelve hours a night, 84 hours a week.

Q Did you work seven days a week?

A Yes, sir.

Q Now, between July 21st, 1954, and December 6, 1955, did you miss any weeks?

A No, sir.

Q Now, during that period of time we are talking about through, I believe it is, 71 weeks, if my memory is correct, what were you being paid for that work?

A $70.50 a week.

Q Were you being paid by the week or by the hour?

A By the week; I got $70.50 a week.

Q Were you being paid any particular rate per hour?

A Well, wasn't nothing said about it.

Q Were you being paid any more for the work hours the latter part of the week than you were for the first part?

A No, sir.

Q Were you drawing any overtime?

A Just that much a week; I don't know whether you figure it overtime, but just $70.50 a week for the 84 hours.

Q And what reason did you leave your employment on December 6, 1955?

A I got my leg broke; had to leave.

Q Did you break your leg out there on the job?

A No, sir. I broke it at home.

Q Mr. Wilson, when you employed our firm to represent you on this matter, would you just tell the Court approximately how many times you have been to our office for conferences?

A Well, I have been there around, I imagine, fifteen or sixteen times.

Q That's been since last July?

A Yes, sir.

Q On those fifteen or sixteen times you have been to our office, were you alone sometime, or was someone with you?

A Sometimes I was alone; sometimes I was with someone else.

Q Out here at the compress, do you know of your own knowledge whether or not — where they were getting this cotton from that they were compressing out there? Do you know where it came from?

A I believe most of it, Holmes Gin.

Q Do you know where the cotton from Holmes Gin came from; I mean what areas it was raised in?

A No, sir, I don't.

Q At all of these 71 weeks that we are interested in right here, Mr. Wilson, was the compress in operation at all times, or was it closed down during any of that period of time?

A Well, I just don't know; I was working at night, and it wasn't running at night when I was down there at times.

Q Were there men working there during the daytime?

A Yes, sir, there was.

Q Every day, or did they shut down?

A I don't know about every day; I wasn't down there every day. I just couldn't tell you.

Q Did you, on several occasions, see them working during the daytime during that period of time?

A Yes.

MR. DAVIS:

I believe that's all.

CROSS-EXAMINATION

BY MR. GOOCH:

Q Mr. Wilson, when did you first go to work for the Lubbock Compress Company?

MR. DAVIS:

We object to that, Your Honor, as immaterial.

THE COURT:

What is the materiality?

MR. GOOCH:

Well, I think I have a right to show the rate of pay. I am leading up to some more questions.

THE COURT:

Overruled.

MR. DAVIS:

Note our exception.

Q (By Mr. Gooch) When did you first go to work for the Lubbock Compress Company?

A Well, I think it was about, sometime in '54, I believe it was. I wouldn't say for certain just what day it was.

Q Were you paid by the hour at the time you went to work at the Lubbock Compress Company?

MR. DAVIS:

We would like to have our objection to that question.

THE COURT:

Yes.

Q (By Mr. Gooch) You received 75 cents per hour when you first started working there, did you not?

A That was when I first started?

Q Yes, sir.

A Yes, sir.

Q And you received how many hours — kill that question. How many hours a week did you work?

A When I first started?

Q Yes, sir.

A Forty-eight — no, 56.

Q Fifty-six?

A Yes, sir.

Q And you were paid 75 cents an hour for 40 hours, and a dollar twelve and a half cents for all the hours over and above that, is that correct?

A Yes, sir.

Q Now, did you have any different arrangements with Mr. — with the Lubbock Compress Company concerning the hours that you had worked along in, say, June of 1954?

A That's when just two of us were working?

Q Yes, sir.

A No, sir, he just told us that he would let us work until he got in touch with the office down there and see what they said about it, and that's all there was said.

Q Did you have any conversation with the manager out there about the two of you doing the work of three so you could get more money?

MR. DAVIS:

We object to that, Your Honor, as immaterial and irrelevant.

THE COURT:

Overruled.

Q (By Mr. Gooch) Did you have any conversation with the manager? Was Mr. Youngkin the manager of the Lubbock Compress Company, Mr. Clay Youngkin?

A What he said, he would see the Fort Worth company and see what they would do about it; said we could work there until he got in touch with them. Said if they didn't let up we could go on and work.

Q I mean, did you have any conversation —

A Not with the agreement we were to get.

Q I am talking about Mr. Youngkin. Did you agree to work there the 84 hours a week for $70.50?

A No, sir, we didn't.

Q You did work for $70.50 for 84 hours, didn't you?

A That's all we got.

Q No conversation about that?

A No, sir.

Q Well, there would be three night watchmen up to that time?

A Yes, sir.

Q And one of them died?

A No, not at that time he hadn't.

Q Well, how come it dropped down to two night watchmen, do you know?

A Well, one of them just quit.

Q Well, then, there were two?

A Yes, sir.

Q And did you have any conversation about you men working 84 hours a week?

A No, he didn't tell us how many hours or nothing like that; he just said we could work there until he got in touch with the Fort Worth outfit, and then he would let us know.

Q Did you work 84 hours a week?

A Yes, sir.

Q Did you receive $70.50 each week for that work?

A Yes, sir.

Q Now, did you, sometime in 1956, get in touch with the Wage and Hours Administrator, or the United States Government get in touch with you, concerning your work with the Lubbock Compress Company?

A Yes, sir.

Q Did you send for them, or do you know how come them to talk with you about it?

A No, I never sent for them; I don't know, they just come in.

Q As a result of that conversation, some money was tendered to you by the Lubbock Compress, was it not?

MR. DAVIS:

We object to that as immaterial.

THE COURT:

Overruled.

Q (By Mr. Gooch) Didn't the Lubbock Compress Company, by virtue of the examination made by the Wage and Hours Administrator, tender to you some money?

A Yes, sir.

Q Do you know how much?

A I believe it was a hundred and eighty some odd dollars.

Q It was based on the determination by them of $225.00, was it not?

A Well, that might be that, but my part was a hundred and eighty something, is what I had it figured, the way they offered it to me.

Q Well, at any rate, they did make tender to you of $225.00, did they not, by virtue of that examination made by the Wage and Hours Administrator?

A Yes.

Q And you were furnished with a copy by Mr. Youngkin of that determination by the Wage and Hours Administrator, were you not?

A A copy like that?

Q Yes, sir.

A Yes.

Q And you signed a release, and, then, later took it back and said you didn't want the money?

A That same evening when I seen the check, I didn't take it.

Q Well, you did sign the release and take the check, and the next day you took it back and said you didn't want it, is that correct?

A That's right.

Q You said that as the night watchman, you looked out for fires. Did you have any other duties down there, Mr. Wilson?

A Well, we watched for anyone coming in, or anything like that, you know.

Q To prevent a theft, or to prevent fires. In other words, to take care of the cotton that had been compressed and was in the process of being compressed, is that correct?

A Well, we just watched for fires and theft such as that. We didn't have no dealings with the cotton; we didn't handle no cotton.

Q I mean by that — I didn't mean you handled cotton, but you were in and out among the cotton bales down there where you were punching your clock?

A Yes, sir.

Q It was your duty to protect that cotton, was it not?

A Yes, that's right.

MR. GOOCH:

That's all.

REDIRECT EXAMINATION

BY MR. DAVIS:

Q Mr. Wilson, did anybody ever explain to you how that Government — Labor Department man figured this $225.00?

A No, sir, they didn't.

Q Were you paid — you worked 84 hours; you had 44 hours overtime coming. Were you paid any overtime for that 44 hours?

A Well, I just got that $70.50 a week is what I got straight through.

MR. DAVIS:

I believe that's all.

MR. GOOCH:
That's all.

CLAY YOUNGKIN,
a witness called by and on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q You are Mr. Clay Youngkin?

A Right.

Q What is your capacity with the Lubbock Compress Company, sir?

A I am the superintendent.

Q Here in Lubbock?

A Yes, sir.

Q Do you have a compress, compresses, at other places besides Lubbock?

A The company does, yes, sir, but there is only one Lubbock compress.

Q And approximately how long have you been superintendent out there?

A I took charge in 1952.

Q All right, sir. Is your job as superintendent of the Lubbock Compress, does that entail the duties of hiring and firing the employes of the Lubbock Compress?

A Yes, sir.

Q I will ask you if these three gentlemen seated here on this front row have worked for you out there at the compress?

A Yes, sir, they have.

Q Mr. Youngkin, where is this cotton raised that you-all compress out there?

A In this area.

Q How big an area?

A Well, the South Plains.

Q All the way from Lamesa to Plainview?

A All the way from Lamesa to Lovington, New Mexico, Plainview, all of this area.

Q And it is approximately 60 miles from Lamesa, is it not?

A I believe so.

Q And it is about 120 miles from Lovington, New Mexico?

A I believe so.

Q Now, Mr. Youngkin, directing your attention back to July 21, 1954, were Mr. Peacock and Mr. Wilson employed as night watchmen at the Compress at that time?

A Yes, sir.

Q From that time until, say, oh, Mr. Wilson's case, up until December 6th, 1955, how many hours a week did he work as a night watchman?

A He worked 84.

Q How many from July the 21st, 1954, until March the 1st, 1956, did Mr. Peacock work?

A Fifty-four — I mean 84.

Q Eight-four hours?

A That's right.

Q Mr. Youngkin, I will hand you some pink slips, and see if you can tell us what these slips are?

A These are a copy of our pay checks; they are employes' copies. We have a yellow one on top of this that they take to our paymaster and get the money, and this is their receipt.

Q And this is what you issue with each check?

A Yes, sir.

Q And these dates that are stamped on them, that is stamped in your office?

A That's right.

Q And there is no signature on these pink slips?

A There is a signature on the original, but not this duplicate.

Q All right. Now, these show that for the week ending January the 7th, 1955, and the next one, week ending January 14, and on through, Mr. Peacock, it shows, does it not, that wages due, $70.50, 76 hours?

A That's right.

Q And did all during this period of time your book reflect that he was working 76 hours?

A Yes, sir.

Q And how many hours each week was he actually working?

A Eighty-four.

MR. DAVIS:

I would like to introduce a couple of these in evidence, not necessarily all of them.

MR. GOOCH:

That's right.

(The documents above referred to were marked for identification as Plaintiffs' Exhibits Nos. 1 and 2 and appear at Pages 94, 95 & 96.)

Q (By Mr. Davis) Mr. Youngkin, the pink slips for Mr. Wilson and Mr. Coffer for the period of time in controversy here would be the same, as far as the amount of money and the hours?

A That's right.

Q Now, how were you paying those men? By the week?

A The way that came up, we had three night watchmen —

Q Well, I asked you how much you were paying these men —

MR. GOOCH:

If the Court please, I believe he has a right to explain the arrangements.

THE COURT:

I think Counsel can ask a particular question he desires and his explanation could be brought in later, of course.

MR. GOOCH:

All right.

Q (By Mr. Davis) Mr. Youngkin, were you paying them by the hour or week?

A We were paying them actually by the week.

Q All right. And one of them worked 83 hours, left an hour early, or got there an hour late, it would have been the same?

A Same exactly.

Q Still got his $70.50?

A That's correct.

Q And on March the 1st, 1956, you left the Compress — when the amendment to the Wage and Hour Law went into effect, you started paying your night watchmen —

MR. GOOCH:

We object to that as something that happened after the lawsuit period, wholly irrelevant and immaterial to any issue in this case as to what they did after the time of the plaintiffs' cause of action.

THE COURT:

Overruled.

MR. GOOCH:

Note our exception.

Q (By Mr. Davis) March 1st, 1956, you-all started paying —

A We started paying a dollar an hour; that was the minimum wage, and if they worked overtime, we paid them a dollar and a half.

MR. GOOCH:

If the Court please, I call your attention that that's after March 1st, 1956, and after the time sued on in this lawsuit. We again move that that answer and question be stricken as immaterial and irrelevant to the issues in this case.

THE COURT:

Well, I will still overrule it. I will undertake to deal with the question, or with the evidence, as it may be proper. If it occurs to me from further development in the case that it is irrelevant and immaterial, why, I will strike it out.

Q (By Mr. Davis) Mr. Youngkin, after March 1st, 1956, was the Compress run exactly like it had been, and the duties of the night watchmen the same as it had been prior to March 1st, 1956?

MR. GOOCH:

May we have the same objection to this line of questioning without the necessity of further objection?

THE COURT:

Yes, you will have a running objection.

MR. GOOCH:

Thank you, sir.

Q (By Mr. Davis) On March the 1st, 1956, when you started complying with the Wage and Hour Law, was after an investigation and conferences with the Labor Department?

MR. GOOCH:

We object to that. That's a mixed question of law and the facts, if the Court please. Any conference with the Labor Department would not have any bearing on this lawsuit or otherwise. It is a question in this case of the applicable law as of the time of the cause of action of these plaintiffs.

THE COURT:

Overruled.

MR. GOOCH:

Note our exception.

THE WITNESS:

What was the question?

Q (By Mr. Davis) On March the 1st, 1956, when you started paying a dollar an hour, and then a dollar and a

half for over 40, that was after you and your company had consultations with the Department of Labor?

A Yes, sir.

Q Now, that changed — from that date forward as compared with that date backward, the mode of pay and the rate of pay was changed?

A Yes, sir.

Q And you started paying hourly after that date, and you had been paying weekly prior to that date?

A Yes, sir, we cut down our hours and didn't work anybody over 40 hours. However, may I make a correction on that? The way I got that, the Inspector inspected our books after March the first.

Q All right, sir. But after March the first, you paid your watchmen a dollar per hour?

A Right.

Q As distinguished from paying them by the week prior to that time?

A Right.

MR. DAVIS:

I believe that's all.

CROSS-EXAMINATION

BY MR. GOOCH:

Q Now, Mr. Youngkin, back in 1954 and the early part of 1954, how many night watchmen did you have down at the Lubbock Compress Company?

A We had three at night.

Q And did something happen to one of them which left you two?

A Yes, sir, one passed away, Mr. Kilpatrick passed away.

MR. DAVIS:

We would like to have our objection to everything before this time just like Mr. Gooch has after this time.

THE COURT:

Overruled.

MR. DAVIS:

Note our exception.

Q (By Mr. Gooch) Now, at the time that you had two watchmen, it's been testified to by Mr. Wilson, that Mr. Wilson and Mr. Peacock started performing the work of three night watchmen sometime in 1954, is that correct?

A Yes, sir.

THE COURT:

Speak out so the reporter can hear you.

Q (By Mr. Gooch) What led to the employment of two night watchmen rather than three night watchmen?

A Mr. Peacock and Mr. Wilson made a special trip down there before I hired the third night watchman and asked me could they do the watch service for two of them in place of three for approximately the same money that the three were getting.

Q At that time how much were you paying the three night watchmen?

A We was paying them 56 hours; we were paying all three of them a hundred and forty-four dollars a week.

Q And how was that arrived at?

A That was arrived at 40 hours at 75 cents, 16 hours at a dollar twelve and a half cents.

Q That made $48.00 a week?

A $48.00 gross.

Q All right, sir. Now, you say Mr. Peacock and Mr. Wilson came down to see you about those two doing the work of three, is that correct?

A That's right.

Q And did you arrive at any conclusion or agreement by virtue of the conference?

A Well, I told them that I couldn't pay them more than I was paying them, the three watchmen.

MR. DAVIS:

We would like to have a distinct objection to that question about agreement.

THE COURT:

Yes, you can have a running objection, too.

THE WITNESS:

Therefore, the best figure we could get at would be 40 hours at 75 cents, which would be $30.00; and 36 hours at a dollar and twelve would be $40.50, which makes the total of $70.50 a week, which we paid them.

Q And how did your books reflect that? As 76 hours as indicated?

A Yes, sir, 40 hours and the 36 hours.

Q And the books reflected that they worked 40 hours at 75 cents, and 36 hours at a dollar twelve and a half cents an hour?

A That's right.

Q And you show a 76-hour total?

A That's right.

Q You cannot show the true totals of 84 hours per week?

A No, sir.

Q And that continued all during the period of time down to March the 1st, 1956?

A Right.

MR. GOOCH:

I believe that's all.

REDIRECT EXAMINATION

BY MR. DAVIS:

Q Mr. Youngkin, talking about this agreement that you practically entered into, was that oral or did you write it down?

A It was oral.

Q You say you figured the first 40 hours at 75 cents an hour?

A That's right.

Q That would be $30.00?

A That's right.

Q And, then, you figured 36 hours at a dollar twelve and a half?

A Right.

Q Now, 40 and 36 makes 76. Now, what kind of arithmetic did you use to figure that last eight hours?

A I didn't figure the last eight hours.

Q That last eight hours of each week on each one of the employes was donated to the Lubbock Compress?

A It wasn't donated; it was treated that way.

Q But they weren't paid for it?

A No.

Q They actually were paid $70.50 a week for 84 hours of work?

A Right.

MR. DAVIS:
I believe that's all.

MR. GOOCH:
That's all.

(Witness excused.)

R. A. PEACOCK,
a witness called by and on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Would you state your name, please, sir?

A R. A. Peacock.

Q Where do you live, Mr. Peacock?

A Present time I live at Dublin, Texas.

Q How old a man are you, sir?

A I will be 70 years old in November.

Q Now, back on July the 21st, 1954, were you working for anybody?

A Lubbock Compress.

Q All right, sir. How long did you work for the Lubbock Compress?

A Something like seven, eight — maybe ten years, I don't remember exactly.

Q From July 21, '54 until March 1st, '56, did you work during that period of time?

A I did.

Q Did you work every week during that period of time?

A No, I made a trip to California. I think I was gone a week.

Q One week?

A Yes.

Q Now, if arithmetic shows from July the 21st, '54 until March the 1st, '56, is 83 weeks, it is your testimony that you worked 82 weeks?

A Right.

Q Now, out of that 82 weeks that you actually worked, how many hours each week did you work?

A Eighty-four.

Q How much were you paid each week?

A $70.50.

Q Were you paid by the hour or by the week?

A Well, I was paid $70.50 a week, and I worked 84 hours.

Q Now, during this time, was the compress in operation all during that 82 weeks?

A Well, they had a crew there; they had several employes there all the time moving the cotton around.

Q There was someone there working every day?

A Yes, sir.

Q Except Sunday, perhaps?

A Yes, sir.

Q Did they work on Sunday or not?

A They had a watchman there on Sunday.

Q Did you happen to notice — did they do anything besides compress cotton down there?

A No, I don't know of anything else.

Q Did you ever notice on the cotton tags down there where all this cotton came from?

A Well, I noticed when they would unload it out of the boxcars, it would be from different places over the country.

Q Name some of the places that you remember, some of the towns.

A Well, I don't remember just — these small towns on the Plains here. I disremember the names of all of them. Some of them quite a ways.

Q Did you ever agree to work eight hours a week for nothing for the Lubbock Compress Company?

A No, sir.

Q Did you ever work eight hours a week for nothing?

A I did.

MR. DAVIS:

I believe that's all.

CROSS-EXAMINATION

BY MR. GOOCH:

Q Mr. Peacock, you testified that you worked 84 hours a week during this period for $70.50?

A That's what I received, yes, sir.

Q Did you raise any objection to that pay?

A When?

Q At any time you received it from all during 1954 and '55, and part of '56.

A No, not at the time I didn't.

Q You didn't raise any objection to it?

A No.

Q Were you present at the Lubbock Compress when they had three night watchmen working 56 hours apiece?

A Yes, sir.

Q And did you know the man that died?

A I knew one of them that died, but at the time we made that change, there was a man quit, Mr. Adams quit.

Q When you talk about a change, what was that change, Mr. Peacock?

A Well, Mr. Adams quit one morning and Mr. Wilson and myself stayed there until Mr. Youngkin came down, and asked him to let us have the — just two of us take care of it.

Q You asked Mr. Youngkin to let the two of you take care of it?

A Right.

Q And what conversation ensued about the pay on that?

A There wasn't nothing said about the pay. He said for us to go ahead at that time and he would see what the Fort Worth office said about it. If he could keep them off his back, he was all right.

Q At that time, did he tell you he would pay you $70.50 a week?

A Wasn't anything said.

Q Well, did you receive a check, I presume, for the first week of $70.50?

A That's right.

Q You knew you were working 84 hours for $70.50?

A That's what I received.

Q You didn't raise any objection to that?

A Not at that time.

Q And when did you raise some objection to it?

A After the Wage and Hour Law man came by.

Q And when was that?

A I don't remember. I wrote a letter first to Mr. Rogers, Regional Director at Dallas, and I received a letter from him. Several of them and he finally told me that it did come under the Wage and Hour Law; wrote me a letter and said Lubbock C...press came under the Wage and Hour Law.

Q All right. Then, he made a determination of your story and that of tne Lubbock Compress Company and said you had coming $279.00, is that correct?

A That was later on, I got that.

Q I understand that as a result of your correspondence before the Wage and Hour Administrator, was it not?

A Yeah, I got a letter from —

Q And by virtue of his determination of $279.00, you received from the Lubbock Compress Company a tender of $279.00 less the deductions, did you not?

A I did, and I didn't accept it.

Q I understand you didn't. You refused it?

A I refused it.

Q But they did make a tender to you of the $279.00?

A That's right.

Q And you refused it?

A I refused it, insufficient amount.

Q That was based on the determination that was made by the Wage and Hour Administrator that you had called into the matter?

A Yeah.

MR. GOOCH:

I believe that's all.

MR. DAVIS:

That's all.

THE COURT:

Let me ask you some questions.

EXAMINATION

BY THE COURT:

Q When you and Mr. Wilson, it was you two that had the talk with Mr. Youngkin?

A That's correct.

Q When you had that talk with him about the two of you taking over the night work, night watching work, did he say anything about he couldn't pay more than what had been paid when there was three working?

A No, he just said to go ahead and work, and he would see what the Fort Worth office said. If he could keep them off his back, he would keep us on; if he didn't, he would have to put on a third man.

Q He didn't say anything about he couldn't be out any more money?

A No, sir.

Q Than he had been paying to the three of you altogether?

A No, sir.

THE COURT:

All right.

M. L. COFFER,

a witness called by and on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Would you state your name?

A M. L. Coffer.

Q Where do you live, Mr. Coffer?

A 1907 East Sixteenth Street.

Q What town?

A Lubbock.

Q Mr. Coffer, did you ever work for the Lubbock Compress Company?

A Yes, sir.

Q When did you work for them, go to work for them?

A I think it was about the 6th of December; it was when Mr. Wilson got his leg broke, and I went to work in his place.

Q That was December the 6th, 1955?

A Yes, sir.

Q How long did you work for them?

A Well, up until — all of that summertime.

Q Were you still working for them on March the first?

A Yes, sir.

Q From the period of time between December the 6th of '55, to March the 1st of '56, a period of ten weeks, did you work each and every one of those ten weeks?

A Yes, sir.

Q How many hours did you work those weeks?

A Eighty-four.

Q How much were you paid?

A $70.50; that's flat pay, before anything is taken out.

Q That was before the income tax and withholding?

A That's right, just flat $70.00

Q When you went to work out there, Mr. Wilson had broken his leg and couldn't work, and you took his place?

A That's right.

Q Did you have any kind of agreement with Mr. Youngkin, or anybody, about your wages?

A No.

Q How did you —

A You see, I worked that day, wasn't at home and they called me. So I think it was about 8:00 o'clock when I came down there that night. Of course, Mr. Youngkin wasn't there. Well, I come back down there the next day. I hadn't seen him; hadn't talked to him.

Well, he wanted me to take Mr. Wilson's place.

Q Did you take his place?

A Yes, I taken his place.

Q How much were you to be paid?

A Well, I just supposed like the rest of them.

Q You knew what the rest of them was making?

A No, I really didn't.

Q Well, did you even ask him about how much you were going to be paid before you went to work?

A Well, I believe he said it would be $70.50, I believe.

Q A week?

A A week.

Q Did he ever say anything to you about paying you so much an hour and overtime, or anything?

A No, sir.

Q I believe you testified, did you or did you not testify that you had worked 84 hours a week for those ten weeks?

A Yes, sir, 84 hours a week.

Q Did this Administrator figure out how much they owed you?

A You mean the Wage and Hour man?

Q Yes.

A It's what he said, but I didn't — Wage and Hour Law didn't tell me anything.

Q Did they send you any letters or anything?

A No.

Q Did they ever send you any checks or releases to sign?

A No.

Q How many times have you come to our office to have conferences with our law firm about this case?

A Well, to accurate guess, I couldn't make an accurate guess, but I would say, I imagine fifteen or sixteen times; that would be my estimate.

Q Of those times that you came up there to talk to various members of the firm, myself, Mr. Beavers, have you been by yourself, or someone with you, or what are the facts?

A Well, I have been by myself, yes, sir, and sometimes I would go with Mr. Wilson and sometimes Mr. Peacock.

Q How long would those visits usually last up there in the conferences?

A Several minutes, you know, sometimes just a little bit; sometimes several minutes, you know, good little bit. Enough to discuss the case.

Q All right.

MR. DAVIS:

I believe that's all.

CROSS-EXAMINATION

BY MR. GOOCH:

Q After the Wage and Hour Administrator talked with you, you were tendered a check for $54.00 by the Lubbock Compress Company, were you not?

A How is that?

Q After the Wage and Hours people talked to you, you were tendered a check by the Lubbock Compress Company for $54.00, were you not?

A No, sir, I wouldn't say a check.

Q Well, you were tendered $54.00?

A Well, in other words, Mr. Youngkin brought a voucher over there and said I could sign to get my money.

Q That was $54.00, less the deducts?

A He said $54.00; I said, "Not for $54.00."

Q What I am trying to prove is that you did receive an offer of $54.00, is that correct?

A Yes, sir, but it was insufficient.

Q I understand that. But you did receive —

A That's why I didn't accept it.

Q I understand.

MR. GOOCH:

I believe that's all.

MR. DAVIS:

I believe that's all, Mr. Peacock (Coffer).

At this time I would like to offer in evidence, certain portions of Paragraph II of the First Amended Answer of the defendant, Lubbock Compress Company. Paragraph II: "Defendant admits that the plaintiffs were at one time employed by Lubbock Compress Company as night watchmen and admits that Lubbock Compress Company is engaged exclusively in the compressing of cotton. The defendant admits that at times it is engaged in the flow of interstate commerce. Defendant further admits that at times pertinent to this lawsuit the three above-named employees, to-wit, R. A. Peacock, M. L. Coffer and H. J. Wilson, came within

the scope of the Fair Labor Standards Act of 1938, as amended, being Title 29, Chapter 8, U. S. Code Annotated, and in particular, Section 207 of said Act." That's the part I would like to introduce.

MR. GOOCH:
We still admit that.

HUGH HAROLD,
a witness called by and on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Would you state your name, please?
A Hugh Harold.
Q What is your occupation or profession, Mr. Harold?
A I am an attorney-at-law in Lubbock, Texas.
Q Are you a graduate of an accredited law school within the State of Texas?
A Yes, sir.
Q Which school are you a graduate of?
A Baylor University.
Q Are you admited to practice law in the State of Texas?
A I am.
Q What year were you admitted, sir?
A In 1950.
Q Where have you practiced your profession since 1950?
A In Lubbock County, Texas.
Q Are you a member of the State Bar Association of

the State of Texas and qualified to practice before the Supreme Court of the State of Texas?

A I am. I hold my license.

Q Have you been admitted to practice in the United States District Court for the Northern District of Texas at Lubbock?

A I have.

Q Mr. Harold, have you ever had any occasion to handle any cases for plaintiffs under the Fair Labor Standards Act?

A I have not.

Q Are you fairly familiar with the Fair Labor Standards Act?

A I am acquainted with it, yes.

Q Have you read that Act?

A Yes, sir.

Q Have you been in the courtroom this morning and heard the testimony and evidence in this case?

A I have.

Q Are you acquainted with the amount of work that is necessary to get a case ready for trial in the United States District Court?

A Yes, I am.

Q And, Mr. Harold, I would like to hand you the record in this case, copies out of my file, so that you can look through it very briefly.

A Yes, sir, I have examined it.

Q I would like for you to look over a copy of a deposition in this case.

A All right, sir.

Q In this type of case, Mr. Harold, I will ask you to assume that there are three plaintiffs, and that they have called on their attorneys for conferences anywhere from

ten to fifteen times apiece; these conferences lasting from a few to several minutes, and that the amount of recovery, if the plaintiffs' theory is sustained by the Court, would be a total of $6,024.48; and the trial that is taking place this morning — can it be stipulated that a pre-trial was held?

MR. GOOCH:

Yes, sir.

Q (By Mr. Davis) — and a pre-trial conference held in December, the lawsuit filed December 24, 1954, and being tried here this morning. Do you have any opinion as to what would be the fair and reasonable attorneys' fees for the plaintiffs' attorney in that case?

A Well, sir, it would depend on several factors; that possibly whether or not it was handled on a contingent fee basis, or whether or not it was a contract basis. If it was on a contingent fee basis, and depending on the nature of the case, why, it would be anywhere from a third, which is a minimum for this locality, upwards to a half. You have to take several factors, whether or not there is the possibility of an appeal.

Q Mr. Harold, I will ask you to assume just the fair and reasonable, fair compensation for the work entailed, regardless of contract or contingent.

A For the amount involved, and the amount of work you have done here, I would base my opinion on somewhere in the neighborhood of fifteen hundred to two thousand dollars; a third of six thousand would be, of course, $2,000.00. So, anywhere up from fifteen hundred to $2,000.00.

MR. DAVIS:

I believe that's all.

MR. GOOCH:
No questions.

(Witness excused.)

MR. DAVIS:
The plaintiff rests, Your Honor.

MR. GOOCH:
Take the stand again, Mr. Youngkin.

CLAY YOUNGKIN,
called by the defending, being previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOOCH:

Q I believe you testified that before the advent of Mr. Peacock and Mr. Wilson becoming the two night watchmen in lieu of three, that you had three night watchmen on the job?

A That's right.

Q I believe you stated that you were paying them on the basis of 40 hours, 75 cents, and 16 hours at a dollar twelve and a half, developing the sum of $48.00 a week?

A That's correct.

Q Arithmetic reveals that three times 48 amounts to $144.00 a week?

A That's correct.

Q At the time Mr. Wilson and Mr. Peacock came in to see you about doing the entire night watchmen with two

rather than three, was the amount of $144.00 a week discussed?

A Yes, sir.

Q What was that discussion?

A The discussion was that I couldn't pay them more than I paid the three watchmen, and they agreed to take $70.50 a week each for their services.

Q And you have testified that that was arrived at by bookkeeping-wise, 40 hours at 75 cents, and 36 hours at a dollar twelve and a half, is that correct?

A That's correct.

Q But they did actually work 84 hours a week and received $70.50?

A That's correct; the hours were the same.

MR. GOOCH:

That's all.

MR. DAVIS:

That's all.

MR. GOOCH:

I would like at this time, if the Court please, to introduce a letter from the United States Department of Labor addressed to John H. Todd, Esquire, Callaway and Reed, 1008 Sixteenth Street Northwest, Washington 6, D. C.

(The document above referred to was marked for identification as Defendant's Exhibit No. 1, and appears on Page 94.)

MR. DAVIS:
We object to that as being hearsay.

THE COURT:
Let me see what it is.

MR. GOOCH:
I, as attorney for the defendant, will be sworn.

(Mr. Gooch duly sworn by the Clerk.)

MR. GOOCH:
My name is J. A. Gooch, lawyer at this bar. I have been practicing about 27 years. I have represented Lubbock Compress Company for the past ten years, and Mr. John H. Todd has been associated with me in the representation of Lubbock Compress Company on matters relating to wages and hours and the Fair Labor Standards Act.

I asked Mr. Todd, in behalf of the Lubbock Compress Company, to secure from the U. S. Department of Labor, Wage and Hour Division, an interpretation, departmental interpretation, of Section 207 (c) of the Act, and that this is the reply which was received by Mr. Todd in my presence; and I know of my own knowledge that F. Granville Grimes, Jr., was the Acting Administrator on March 31, 1952.

THE COURT:
I will overrule the objection. I think in any event it would be material on some points in the case.

MR. DAVIS:

We submit that we don't have the right to cross-examination to the author or the man that received the letter. It is a conclusion.

THE COURT:

Well, it is a statement of departmental construction, and there will be a good many instances where there might be departmental construction about things as shown in regulations, or office memoranda even, like in the Internal Revenue Bureau where they have some different types of rulings.

MR. DAVIS:

Note our exception.

THE COURT:

But I think it would be admissible although you wouldn't have the opportunity to confront the individual or official who made the ruling and undertake to show why he was wrong about it. There would be no point in cross-examination here, unless it be to try to show he was wrong about his construction.

MR. DAVIS:

Yes, sir, that's our point, to show that he is wrong; that would be our purpose, to show that he is wrong, and it is a conclusion on his part.

THE COURT:

The statement that he recites there is the departmental construction; isn't a construction that's a fact, or purports to be a fact at least, that's the departmental construction.

Now, that doesn't necessarily say that the construction is correct. We all know that departmental constructions are not every day, but occasionally, rejected by the courts. But I think it is admissible for what weight it may have. It is not conclusive. All right, anything more?

MR. GOOCH:

Judge, I think that's all. May I have just a second?

THE COURT:

Let Mr. Youngkin come back just a minute.

CLAY YOUNGKIN,

recalled by the Court, being previously sworn, was examined and testified as follows:

EXAMINATION

BY THE COURT:

Q You have said, if I understand your testimony, that when you had the three night watchmen, and before one of them dropped out, you had been paying the three of them an aggregate of $144.00 a week?

A That's right.

Q Then, after the two others began doing the night watching job, just on a two-handed basis, you paid them $70.50 each per week?

A That's correct.

Q Which makes $141.00. Now, what about the other $3.00?

A Well, that's the best way we could divide it without going over the hundred and forty-four.

THE COURT:
All right. Any more testimony?

MR. GOOCH:
I have no more.

CLAY YOUNGKIN,
recalled by the plaintiffs, being previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:
Q Mr. Youngkin, does the Lubbock Compress Company have ang gins?
A No, sir.
Q Don't own any gins?
A No, sir.
Q And they do nothing but compress?
A That's right.

MR. DAVIS:
I believe that's all.

CROSS-EXAMINATION

BY MR. GOOCH:
Q This $141.00 was as close as you could get to a hundred and forty-four by figuring the 40 hours at 75 cents an hour, and 36 hours at a dollar twelve and a half, is that correct?
A Yes, sir.

Q That was the method by which you arrived at this $70.50?

A Correct.

Q Was that explained to the men?

A It was.

Q Did they understand it?

A They did.

Q Went along all this period of time taking the $70.50 and raising no objection?

A That's right.

MR. GOOCH:

That's all.

REDIRECT EXAMINATION

BY MR. DAVIS:

Q You say you paid them $70.50 a week, that's as close as you could get?

A Yes, sir.

Q How close would it have been if you paid them $72.00 a week?

A There would be fractions in there which we don't try to put in our bookkeeping.

MR. DAVIS:

That's all — a dollar twelve and a half is not a fraction?

A Right.

MR. DAVIS:

Thank you, that's all. The plaintiff closes.

MR. GOOCH:
That's all.

(Witness excused.)

MR. GOOCH:
I assume that these pleadings will be considered, and also the request for admissions and answer, will they not, Your Honor, in evidence?

THE COURT:
I saw some in the record here, and I think they should be considered, the request for admissions and the admissions, as far as there were admissions. Now, I don't think that denials cut any figure.

MR. GOOCH:
That's right, but the denials and the admissions in the answer do cut a figure.

THE COURT:
What's that?

MR. GOOCH:
In the answer filed here, that's considered a part of the case, is it not?

THE COURT:
Yes.

MR. GOOCH:
And where I have made statements in the answer which

have not been denied, as I understand the rule, are confessed as being true?

THE COURT:

Well, now, I don't know as I can go that far. You are talking about the answer. Of course, anything in the answer, like anything in the plaintiff's pleading, is in the nature of an admission, certainly is before the Court. But something of a self-serving nature in a pleading that's not explicitly denied by the other part, you say that's equivalent to an admission?

MR. GOOCH:

Yes, sir.

THE COURT:

Well, I don't recall that as being something I have ever gone through. As to the pleadings?

MR. GOOCH.

Yes, sir.

THE COURT:

All right.

MR. GOOCH:

My point, however, in mentioning at this time, in addition to the other features, is that I have proved in this case a tender of money which is set forth in my answer as an alternative count only, if the Court please.

THE COURT:

Well, you have put on some proof about it.

MR. GOOCH:

That's right. It follows the pleadings, is my point. But it was an alternative plea, was the thing I wanted to get before the Court, and I hope the Court will take into consideration the pleadings and the admissions and the evidence.

THE COURT:

Well, I remember the evidence on it, and I don't think there is any question but what those tenders were made. I haven't heard any contradiction of it.

MR. DAVIS:

The Court recalls, the plaintiff did not start into the question of tender to see whether or not they admitted liability by tendering the payment. The only question for the Court to decide would be how much.

We didn't go into it. Mr. Gooch went into it. I think that is what he is talking about, would that be considered an admission of liability when he went into it and the plaintiff abstained from going into it.

MR. GOOCH:

Well, I am talking about the proof on the tenders in the pleadings was an alternative plea only. I am contending, if the Court please, that this industry is exempt from overtime under Section 207 (c), but in the alternative, I set up that there have been tenders made by the amounts shown by the Wage and Hour Administrator. If you ask me how he made those determinations, I can't answer your question, I don't know.

THE COURT:

Well, I have the same attitude in this case that I brought up at the time of the pre-trial in it. I think that this question of whether the defendant is exempt under the provisions of this Section 207, I think it is, is a very serious point. The language is the ginning and compressing. I remember, without having looked at the case since, that one decision by the District Judge down in Houston, threw out the suggestion that it might be argued that that statutory language meant it covered only establishments which conducted the two phases, both ginning and compressing. But somebody said, and I think that without it having been said, all of us would have passed through our minds the question of when, if ever, we saw anybody that carried on in such a combined business as that. I don't recall ever having seen it done, and I am sure it would be quite a rarity. And I rather lean to the view that the exemption extends to persons engaged either in the ginning business or in the compressing business. And, of course, if there should be anywhere persons engaged in the combined business of both, ginning and compressing, it would cover them. If there is any case on that question outside of the case where the decision was written by Judge Kennerly, and in which he didn't, as I remember, take any very positive stand on it, I don't know of such a precedent.

Now, I remember Judge Hutchison decided a case that you cited, but I don't remember that it was clear on this point.

Beyond the question of statutory construction here, there is no dispute, as it seems to me, that in event there is no exemption these men have coming anyway a settlement on

eight hours a week unpaid overtime and that would be all, if there was, in reality, an hourly rate factor in the payment of $70.50 a week.

Now, do you have any different view about that, that if there is an hourly rate factor in the calculation of this $70.50 a week, then, and if they had worked only 76 hours in fact they would have nothing coming.

MR. DAVIS:

If there is an exemption, Judge. But our contentions are that they were being paid the minimum wage; they did not receive their overtime, they were paid so much a week. And I have some literature here, some interpretations from the Labor Department.

THE COURT:

What is your position about it?

MR. DAVIS:

That the 84 hours should be divided by $70.50, or vice versa, getting so much per hour for the whole 84 hours. And the last 44, these men are entitled to 50 percent of that amount, which figures 42 cents an hour for the last 44 hours per each week, or $36.90 a week.

THE COURT:

Well, you would ignore the hourly rate of 75 cents, if there was such an hourly rate?

MR. DAVIS:

Yes, sir.

THE COURT:
You would ignore that, is that correct?

MR. DAVIS:
Yes, sir.

THE COURT:
All right. Now, what's your position?

MR. GOOCH:
My position is that under this section of law, that the only prerogative either the Administrator or the Court has is to see that the minimum is paid. I don't think you can ignore the 75 cents, because that was the minimum wage standard at the time that this controversy arose.

And, again, I reiterate that the only province of this section of the Wage and Hour is to see that the minimum wages are paid.

THE COURT:
Well, your position would get to this conclusion: that they are just entitled to eight hours more of overtime at the same rate they were paid for the 36 hours?

MR. GOOCH:
That is correct, Your Honor. To be fair with the Court, I would say they would be entitled to, under the theory of not admitting anything, this eight hours would be entitled at the overtime rate of a dollar twelve and a half an hour, or $9.00 a week, if they are covered.

THE COURT:
Well, what was the 36 hours paid at?

MR. GOOCH:
Dollar twelve and a half. If you take the minimum of 40 hours at $30.00, that's what it amounts to.

THE COURT:
Yes.

MR. GOOCH:
Then, the 36 hours that they were paid a dollar twelve and a half cents.

THE COURT:
Yes.

MR. GOOCH:
That's $40.50.

THE COURT:
Yes.

MR. GOOCH:
Or $70.50.

THE COURT:
And, then, eight times a dollar twelve is $9.00.

MR. GOOCH:
That's the maximum I think they could recover.

THE COURT:

Well, that's the same thing I was talking about. That is the minimum time and a half, four hours in excess of 40 hours. Now, let's see. Mr. Davis, you said that you had some late authority, didn't you?

MR. DAVIS:

Well, I have one of these interpretations by the Labor Department on how to figure the regular rate and time and a half, of course.

THE COURT:

I thought you meant you had some court decisions.

MR. DAVIS:

No, sir, it is one of those Labor Department bulletins. The testimony was they were paid by the week, and it explains here how to figure the regular rate if they are paid by the week.

THE COURT:

I suppose, from what's been said here, that you can't start out with an assumed deficiency of $9.00 a week and make any calculation that will coincide with what the agency office figured out, or can you?

MR. DAVIS:

No, sir.

(Thereupon, the trial was concluded.)

Form 141-50

To Paymaster:
J & K Grocery & Market
218 - 18th Street
Lubbock Texas

Company
LUBBOCK COMPRESS CO.

Press at
LUBBOCK, TEXAS

Pay Roll No. Y 26 Check No. 1
Week ending
DEC 30 1955

PAY ONLY TO R. A. PEACOCK $60.89

Sixty and 89 100 DOLLARS

TIME CHECK
Not Transferable
Must be presented to Paymaster by
payee in person and duly endorsed.

Wages Due		$70.50 a c 76 Hours.
Less FOAB Tax	$1.41	
Less W. H. Tax	$8.20	$ 9.61
Net Amount		$60.89

(Signed) (ILLEGIBLE)

DUPLICATE
NON-NEGOTIABLE

P — 1 gr

Form 141-50

To Paymaster:
BILL REID'S GROCERY
LUBBOCK, TEXAS

Company
LUBBOCK COMPRESS CO.

Press at
LUBBOCK, TEXAS

Pay Roll No. X 35 Check No. 2

Week ending
MAR 4 — 1955

PAY ONLY TO R. A. PEACOCK $60.89

Sixty and 89/100 DOLLARS

TIME CHECK
Not Transferable
Must be presented to Paymaster by
payee in person and duly endorsed.

Wages Due		$70.50 a/c 76 Hours.
Less FOAB Tax	$1.41	
Less W. H. Tax	$8.20	$ 9.61
Net Amount		$60.89

DUPLICATE
NON-NEGOTIABLE

P — 2 gr

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC
CONTRACTS DIVISIONS
WASHINGTON 25, D. C.

OFFICE OF THE
ADMINISTRATOR

MAR 31, 1952

John H. Todd, Esquire
Callaway & Reed
1008 Sixteenth Street, N. W.
Washington 6, D. C.

Dear Mr. Todd:

This is in reply to your letter of March 25, 1952, regarding the use of the term "ginning and compressing" in section 7(c) of the Fair Labor Standards Act.

It is the position of the Department of Labor that the exemption is applicable separately to employees in a place of employment where their employer is engaged in ginning of cotton, and to employees in a place of employment where their employer is engaged in the compressing of cotton.

Very truly yours,
(Signed) F. GRANVILLE GRIMES JR.
F. Granville Grimes, Jr.
Acting Administrator

D — 1 gr

FINDINGS OF FACT

(Number and Title Omitted)

Filed: August 12, 1957

The Court hereby files Findings of Fact and Conclusions of Law in above cause, as follows:

1. The facts stipulated by counsel at the outset of the trial herein are adopted, and the further findings herein are supplementary to said stipulation.

2. The minimum lawful wages payable to the plaintiffs as employees of the defendant during the period in question was 75 cents per hour.

3. The plaintiffs and the defendant had a precedent agreement whereby said employees were to receive $70.50

each for every week in which they worked 84 hours as night watchmen, and the defendant in its bookkeeping distributed said weekly wages as pay at the rate of 75 cents per hour for 40 hours, and as pay at the rate of $1.12½ per hour for 36 hours, and showed no pay for 8 hours. In the employment agreement between the plaintiffs and the defendant, when the parties agreed on the weekly wage of $70.50 for services 12 hours a day, 7 days a week, making a total of 84 hours weekly, there was no stated rate of pay per hour nor any stated rate of pay for overtime, and the defendant deemed itself exempt from the overtime terms of the law.

4. The sum of $500.00 would be a fair and reasonable attorney's fee for the services of plaintiff's counsel in this suit.

Conclusions of Law

1. The defendant was subject to Sec. 206(a), Title 29, U.S.C.A., and was bound to pay each of the plaintiffs a minimum of 75 cents per hour for their services as night watchmen during the period in question.

2. The defendant during said time was not subject to the provisions of Sec. 207(a), Title 29, U.S.C.A., but instead was exempt under the terms of Sec. 207(c), and consequently, the defendant was not liable for any overtime compensation.

3. The difference in scope between Sec. 207(c) and Sec. 213(a)(10) is that the first provides only an overtime exemption, while the last provides both a minimum wage and an overtime exemption, but the defendant here does

not claim nor qualify for such double exemption, for one thing, at least, from the standpoint of the "area of production" requirement. DATED August 10, 1957.

/s/ JOS. B. DOOLEY,
UNITED STATES
DISTRICT JUDGE

COST BOND

(Number and Title Omitted)

Filed: August 30, 1957

KNOW ALL MEN BY THESE PRESENTS:

That R. A. Peacock, M. L. Coffer and H. J. Wilson, as principals, and U. S. F. & G. Co. (HDR) as surety, are held and firmly bound unto the Lubbock Compress Company in the sum of Two Hundred Fifty ($250.00) Dollars, for the payment of which we do jointly and severally bind ourselves, our successors and assigns. The condition of the bond is as follows:

R. A. Peacock, M. L. Coffer and H. J. Wilson are appealing this cause to the United States Court of Appeals for the Fifth Circuit. Said R. A. Peacock, M. L. Coffer and H. J. Wilson shall pay the cost if the appeal is dismissed or the judgment affirmed, or shall pay such costs as the appelate court may award if the judgment is modified,

then this bond shall be void; otherwise to be payable forthwith.

Signed this 29 day of August, A. D., 1957.

R. A. PEACOCK, M. L. COFFER
and H. J. WILSON
By /s/ Bill Davis,
Attorney of Fact.

(SEAL)

UNITED STATES FIDELITY
AND GUARANTY
COMPANY
/s/ H. Dean Redus,
Attorney-in-Fact SURETY.

NOTICE OF APPEAL

Filed: August 15, 1957

In the District Court of the United States
For the Northern District of Texas
Lubbock Division

Civil Action No. 2121

R. A. Peacock, M L. Coffer and H. J. Wilson

versus

Lubbock Compress Company

Notice that the above named plaintiffs, R. A. Peacock, M. L. Coffer and H. J. Wilson, appeal to the United States Court of Appeals for the 5th Circuit from the trial courts action in denying plaintiff's Motion for new trial.

Copy hereof has been duly mailed to the attorneys of record for the defendant, Lubbock Compress Company, the same being Cantey, Hanger, Johnson, Scarborough & Gooch, Attorneys at Law, Sinclair Building, Fort Worth 2, Texas, this 14th day of August, A.D., 1957.

HUFF & SPLAWN

(Signed) By BILL DAVIS
Bill Davis
ATTORNEYS FOR PLAINTIFF

HUFF & SPLAWN

Attorneys at Law
817½ Broadway
Post Office Box 506
Lubbock, Texas

August 14, 1957

FILED 15th day of August
1957 at 8:30 o'clock A.M.
JOHN A. LOWTHER, Clerk
By /s/ Jacqueline Siniard,
Deputy.

Mrs. Olive Fluke
United States District Clerk
Post Office Building
Lubbock, Texas

RE: R. A. Peacock, et al vs.
Lubbock Compress Company

Dear Mrs. Fluke:

Enclosed please find Plaintiff's Notice of Appeal and Cost Bond which we would appreciate your filing in this cause. We would like for this to serve as our designation of the record in this case on appeal, and therefore ask that this letter be filed in the papers of the cause and request the following instruments be included in the transcript in this cause.

(1) Plaintiff's Original Complaint

(2) Defendant's Original Answer

(3) Defendant's First Amended Answer

(4) Plaintiff's Request for Admissions of Fact

(5) Answers of Defendant to Plaintiff's Request for Admissions of Fact

(6) Deposition of Clay Youngkin

(7) Judgment

(8) Plaintiff's Motion for New Trial

(9) Plaintiff's Motion for Findings of Fact and Conclusions of Law

(10) Order Overruling Plaintiff's Motion for New Trial and Findings of Fact and Conclusions of Law

(11) Transcript of all the testimonies, stipulations and all the arguments used at the trial

(12) The Court's Findings of Fact and Conclusions of Law

(13) Cost Bond

(14) Notice of Appeal

By copy of this letter we are requesting the reporter to prepare the proceedings that took place at the trial of this cause, including the testimony of all witnesses, stipulations of all parties, and all argument of counsel, and request the reporter to furnish this transcript of proceedings to you as soon as possible.

Yours very truly,

HUFF & SPLAWN
By /s/ Bill Davis

BD : mj
cc: Cantey, Hanger, Johnson, Scarborough
1500 Sinclair Building
Fort Worth 2, Texas

Mr. Vincent G. Meyer
Federal Building
Amarillo, Texas

CLERK'S CERTIFICATE

I, JOHN A. LOWTHER, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript of the record and all proceedings in Cause No. 2121 Civil, styled R. A. Peacock, et al, vs. Lubbock Compress Company, as fully as required in the Designation of Record on Appeal filed in this office on August 15, 1957.

WITNESS my hand officially and the seal of said Court at Lubbock, Texas, this the 20th day of September, A. D., 1957.

JOHN A. LOWTHER, Clerk
(Signed) By JACQUELINE SINIARD
(SEAL) Deputy.

No. 933

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D., 1958

No. 16,922

R. A. PEACOCK, M. L. COFFER AND
H. J. WILSON, *Petitioners*

vs.

LUBBOCK COMPRESS COMPANY, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

HUFF & SPLAWN
Lawrence E. Green
P. O. Box 506
Lubbock, Texas
Attorneys for Petitioners

Fort Worth Brief Printing Co., 610 So. Jennings Phone ED 2-4070

INDEX

	Page
Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit	1
Summary Statement of Matter Involved	1
Jurisdictional Statement	2
Questions Presented	2
Reasons Relied on for Allowance of Writ	4
Prayer	4
Appendix	6

INDEX OF AUTHORITIES

Fair Labor Standard Act of 1938, Title 29, Chapter 8 of U.S. Code Ann., Sections 206, 207, 217, & 207 (c) 2, 3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D., 1958

No. 16,922

R. A. PEACOCK, M. L. COFFER AND
H. J. WILSON, *Petitioners*

vs.

LUBBOCK COMPRESS COMPANY, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE EARL WARREN, CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioners, R. A. Peacock, M. L. Coffer and H. J. Wilson, respectfully petition this Honorable Court for a Writ of Certiorari to review a judgment and opinion of the Court of Appeals for the Fifth Circuit, rendered in this cause on March 4, 1958.

I.
SUMMARY STATEMENT OF MATTER INVOLVED

This is an action brought in the United States District Court for the Northern District of Texas by R. A. Peacock, M. L. Coffer and H. J. Wilson, peti-

tioners herein, against Lubbock Compress Company, respondent herein, for unpaid minimum wages and overtime under the Fair Labor Standards Act of 1938, Title 29, Chapter 8 of U. S. Code Ann. This cause involved Sections 206, 207 and 216 of the Act. The petitioners were night watchment and brought suit for overtime wages against the Compress Company, who, admittedly was subject to the Act, and who had employed petitioners for eighty-four hours each week at a wage in excess of the minimum hourly rate (75c) but without payment of overtime. The trial was by the Court without a jury and judgment was rendered in favor of respondent (Tr. 113). An appeal from said judgment was taken by petitioners to the Court of Appeals for the Fifth Circuit which affirmed the judgment of the Trial Court.

The only question involved on said appeal was the meaning of the word "and", as used in Section 207(c), in the sentence "or in the ginning *and* compressing of cotton." The court of appeals for the Fifth Circuit decided that the word "and", in the sentence last quoted was disjunctive (Tr. 108), and that the ginning of cotton, the compressing of cotton, *either* or both is exempt from the overtime provisions of the Act. (Tr. 112).

II.
JURISDICTIONAL STATEMENT

The statutory provision believed to sustain the jurisdiction of this Court is Section 1254 of Title 28 of the United States Code. The statute of the United States the validity of which is involved is Section

207(c) Fair Labor Standards Act 1938, Title 29, United States Code, which provides as follows:

> "In the case of an employer engaged in the first processing of milk, buttermilk, whey, skimmed milk, or cream into dairy products, *or in the ginning and compressing of cotton*, or in the processing of cottonseed or in the processing of sugar beets, sugar-beet molasses, sugar cane, or maple sap, into sugar * * * the provisions of subsection (a) * * * * (29 USCA 207(a) requiring overtime) shall not apply to his employees in any place of employment where he is so engaged * * * * *."

The date of the judgment sought to be reviewed by certiorari is March 4, 1958, and the date of this application for Certiorari is 17th day of April, A.D., 1958.

III.
QUESTIONS PRESENTED

The question herein presented is whether Congress intended the exemption under 207(c) pertaining to "ginning *and* compressing" to actually mean "ginning *or* compressing." The actual intent of the Congress is the issue and petitioners believe that in view of the clear and unequivocal language of Congress in the exemption under 207(c), it must be clearly shown that the intention of Congress was different from the plain wording of the Statute.

IV.
REASONS RELIED ON FOR ALLOWANCE OF WRIT

1. The decision of said Court of Appeals holding that "ginning *and* compressing of cotton" as plainly stated by the Congress in 207(c), means "ginning *or* compressing of cotton", involves an important question of Federal law which has not been, but should be, settled by this Court.

2. The decision of said Court of Appeals as set forth in next preceding paragraph (1) above, is a decision of a Federal question in a way probably in conflict with applicable decisions of this Court.

3. The decision of said Court of Appeals overriding the plain language of an Act of the Congress, as set forth in paragraph (1) above, so far departs from the accepted and usual course of judicial proceedings, or so far sanctions such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

WHEREFORE, your Petitioners pray that a writ of Certiorari issue under the seal of this Court, directed to the Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and the proceedings of said Court of Appeals, Fifth Circuit had in case numbered and entitled on its docket, No. 16,922, R. A. Peacock, M. L. Coffer, and H. J. Wilson, Appellants, vs. Lubbock Compress Company, Appellee, to the end that this cause may be review and determined by this Court as provided for

by the Statutes of the United States; and that the judgment herein of said Court of Appeals be reversed and that judgment be rendered in favor of petitioners, and for such further relief as this Court may deem proper.

Dated April 17th, A.D., 1958.

HUFF & SPLAWN
P. O. Box 506
Lubbock, Texas

By .....
Lawrence F. Green
Attorneys for Petitioners

JUDGMENT

Extract from the Minutes of March 4, 1958.

No. 16922

R. A. PEACOCK, M. L. COFFER
and H. J. WILSON,

versus

LUBBOCK COMPRESS COMPANY

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, R. A. Peacock, M. L. Coffer and H. J. Wilson, and the surety on the cost bond herein, United States Fidelity and Guaranty Company, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

—o—

In The
UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 16922

R. A. PEACOCK, M. L. COFFER,
and H. J. WILSON,
Appellants,

versus

LUBBOCK COMPRESS COMPANY,
Appellee.

Appeal from the United States District Court for the Northern District of Texas.

(March 4, 1958.)

Before HUTCHESON, Chief Judge, and JONES and BROWN, Circuit Judges.

BROWN, Circuit Judge: This whole case turns on one word. Does the word "and" mean *and?* Does it mean *or?* May it have been primarily used as a comma?

The question arises in connection with an FLSA suit for overtime wages brought by three night watchmen against the Compress Company who, admittedly, was subject to the Act, and had employed them for eighty-four hours each week at a wage in excess of the

minimum hourly rate (75c) but without payment of overtime. The dispute narrows down to Section 207(c) with emphasis on the few words italicized:

> "In the case of an employer engaged in the first processing of milk, buttermilk, whey, skimmed milk, or cream into dairy products, *or in the ginning and compressing of cotton*, or in the processing of cottonseed, or in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap, into sugar * * * the provisions of subsection (a) * * * [29 USCA 207(a) requiring overtime] shall not apply to his employees in any place of employment where he is so engaged * * *." 29 USCA 207(c), Section 7 of the Act.

The statute, of course, says "ginning *and* compressing of cotton." If it is conjunctive, the watchmen are right, the Compress is wrong, and the cause must be reversed. This is so because it is admitted that the Compress Company is engaged exclusively in compressing cotton and never has engaged in the activity of ginning cotton or a combination of ginning and compressing. Actually, it cuts much deeper since it is an acknowledged undisputed fact of the cotton industry that compressing is an operation entirely removed from ginning and that the two are never carried on together. To read it literally here is to read it out of the statute.

But the word "and" is not a word with a single meaning, for chameleonlike, it takes its color from its surroundings. Nor has the law looked upon it as such. It is ancient learning, recorded authoritatively for us nearly one hundred years ago, echoing that which had accumulated in the previous years and fore-

casting that which was to come,' that, "In the construction of statutes, it is the duty of the Court to ascertain the clear intention of the legislature. In order to do this, Courts are often compelled to construe 'or' as meaning 'and,' and again 'and' as meaning 'or.'" *United States v. Fisk* (1866) 70 U.S. (3 Wall) 445, 448, 18 L.ed. 243, 244, and see Heydon's Case (1584), 3 Co. 7a.

In searching then for the Congressional purpose, there appears to be no basis for concluding that the exemption was to be confined to those engaging in *both* ginning and compressing. Indeed, the contrary appears. The great concern of Congress was to exempt agriculture as such from the Act. *Maneja v. Waialua Agricultural Co.*, 349 U.S. 254, 99 L.ed. 1040. Once it set out to shore up that basic exclusion, certain operation such as those defined in Section 207(c) were specifically removed so far as *hours* were concerned, and other operations of the kind described in 213(a)(10) within the area of production to be defined administratively were taken out from the

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[1] Hundreds of cases are conveniently collected in Words and Phrases, Volume 3, under the title word "And," pages 569, and see especially 583-593 under the heading of "Civil Statutes." Whatever the particular meaning attributed to the word or words may be in each of these collected cases, the universal test may be summarized. The words "and" "or" when used in a statute are convertible, as the sense may require. A substitution of one for the other is frequently resorted to in the interpretation of statutes, when the evident intention of the lawmaker requires it.

[2] 29 USCA 213(a)(10): "The provisions of sections 206 and 207 * * * [29 USCA 206, 207] shall not apply with respect to * * * (10) any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, *ginning, compressing*, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products." (Emphasis supplied)

Act as to both *hours* and *wages*. The latter, Section 213(a)(10), note 2, *supra*, was to make certain that for services described in it, the small farms forced to use nearby independent contractors, or the like, would not be worse off than larger integrated farms equipped with their own facilities.[3] In that Section, Congress did not even find it necessary to use the descriptive term "cotton." So long as the operation is within the area of production as promulgated, the 213(a)(10) exemption applies to ginning of cotton, the compressing of cotton, or either one or both of them.

Of course the two sections, 207(c) and 213(a)(10) are not complementary and are intended to, and do, accomplish different objectives. *Maneja v. Wailua Agricultural Co., supra.* But if either of the two activities, ginning *or* compressing, was such as to warrant exemption within the geographical-population limits of the area of production, *Budd v. Mitchell*, 350 U.S. 473, 100 L.ed. 565, from the whole Act, it seems highly improbable[4] that Congress in mentioning

[3] Maneja v. Waialua Agricultural Co., 349 U.S. 254, 268, 99 L.ed. 1040, 1055: "Thus, for example, the cotton farmer without a gin was placed on an equal footing with farms who ginned their own cotton, since each could have their cotton ginned by employees who were covered by neither the wage nor the hour provisions of the Act."

[4] Maneja v. Waialua Agricultural Co., 349 U.S. 254, 267, 99 L.ed. 1040, 1954: That case involved the processing of sugar cane into sugar. The Court's reference to "cotton ginning" alone and not in conjunction with compressing indicates, however, that it saw no decisive significance in the coupling word "and." To the suggested argument that the express exemption in 207(c) from overtime liabilities was a deliberate choice by Congress to limit relief to overtime, the Court said: "But we cannot be sure of this, because §7(c) [207(c)] includes similar exemptions for operations like cotton ginning, which also come within the agricultural exemption if performed by the farmer on his own crops. More significant is the *omission* of sugar mills from the exemption provided by §13(a)(10)

the two again deliberately set out to prescribe a standard impossible to meet as to the hours-overtime exemption of 207(c).

If Congress did not intend the Section 207(c) exemption to apply to those same operations described in 213(a)(10) "ginning, compressing," all it had to do was to omit altogether any reference to this activity in 207(c). To accomplish any such assumed objective, it was not necessary for Congress to go at it by the roundabout method of appearing to grant it only to take it away by the prerequisite of a dual combination of "ginning *and* compressing" of cotton.[2]

For us to conclude that Congress meant "and" in a literal conjunctive sense is to determine that Congress meant in fact to grant no relief. To do this is to ignore realities, for Congress has long been acutely aware of the manifold problems of the production, marketing and distribution of cotton. The commodity is one of the most important in the complex pattern of farm parity and production control legislation. It

[213(a)(10)] from various processing operations performed within the area of production." (Court's italics)

[2] The sparse legislative history on the point as set forth in the brief is unilluminating. Apparently in its original form, Senate Bill 2475, 75th Congress, granted the overtime exemption for "the ginning and baling of cotton." The "baling" is an integral part of the "ginning" process. In Committee "compressing and storing" of cotton was added. This was accomplished by merely striking out the word "baling" and inserting the words "compressing and storing." H.R. Rep. 1452, Senate Bill 2475, August 6, 1937, 75th Congress, 1st Sess. p. 3. At page 14, the Committee stated:

> "A committee amendment proposes as an additional exemption persons employed in connection with the ginning, compressing, and storing of cotton or with the processing of cotton seed."

The activity of "storing" was deleted on the floor so that the "and" was moved over to precede "compressing" to read as finally enacted. As such, it took the place of the former comma.

is inconceivable that Congress legislated in ignorance of the distinctive nature of the physical operations of ginning of cotton as compared to the compressing of cotton, or that, with full consciousness of these practicable considerations, it meant to lay down a standard which could not be met in fact.

Literalism gives way in the face of such considerations. *United States v. American Trucking Associations, Inc.*, 310 U.S. 534, 543, 84 L.ed. 1345, 1350; *Fulford v. Forman*, 5 Cir., 245 F.2d 145; *Florida Citrus Exchange v. Folsom*, 5 Cir., 246 F.2d 850; *United States v. Morris*, 5 Cir., ... F.2d ..... [No. 16858 dated February ...., 1958]. Under Section 207 (c), the ginning of cotton, the compressing of cotton, the performance of either or both is exempt from the overtime provisions of the Act.

AFFIRMED.

A true copy
Test:

/s/ *Edward W. Wadsworth*
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